
**MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION
AGREEMENT (TERRY RANCH)**

by and between

WINGFOOT WATER RESOURCES, a Colorado Limited Liability Company

and

**THE CITY OF GREELEY, COLORADO, acting by and through its WATER
ENTERPRISE**

Dated: June __, 2020

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MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT
(Terry Ranch)

This MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION AGREEMENT (Terry Ranch) (this “Agreement”) dated _____, 2020 (“Effective Date”) by and between WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company (“Wingfoot”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“City”), acting by and through its WATER ENTERPRISE (“Greeley”) (Wingfoot and Greeley each being a “Party” and collectively the “Parties”).

RECITALS

A. Wingfoot is the owner of nontributary deep aquifer ground water rights, underlying real property in Weld County, Colorado, legally described on Exhibit A-1 and depicted on Exhibit A-2 (“Terry Ranch”), adjudicated and quantified on June 14, 2018, in Case Number 11CW275, District Court, Water Division 1, Colorado, and further described in that certain Special Warranty Deed, dated September 30, 2016, recorded October 17, 2016 in the real property records of the Clerk and Recorder for Weld County, Colorado (the “Records”), at Reception Number 4245308, and that certain Special Warranty Deed, dated April 30, 2018, recorded May 1, 2018 in the Records at Reception Number 4394951 (collectively, the “Water Rights”). Terry Ranch is currently owned by the Terry Ranch Grazing Association (“Association”).

B. Wingfoot, as the owner of the Water Rights, holds an easement to access Terry Ranch for purposes more fully described therein, attached as Exhibit B (“Access Easement”).

C. Wingfoot has also entered into a Ground Water Production Lease with the State of Colorado, State Board of Land Commissioners, dated January 18, 2018, for purposes more fully described therein, attached as Exhibit C (“State Land Board Lease”).

D. The Parties desire to set forth the terms and conditions pursuant to which Wingfoot shall create a tenancy in common with Greeley for the Property (defined below), and pursuant to which Wingfoot agrees to sell, and Greeley agrees to buy, an initial interest in the Water Rights, related property, and Access Easement, together with assignment of Wingfoot’s rights to the State Land Board Lease, and all other appurtenant property rights and water rights associated therewith, as more fully provided hereinafter.

E. The objective of this Agreement is to provide the terms upon which Wingfoot will convey the Property to Greeley and make certain cash contributions for the construction of Project Infrastructure (defined below) and the terms upon which Greeley will make payment to Wingfoot for such conveyance.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, Wingfoot and Greeley hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings:

“*Access Easement*” has the meaning given in Recital B.

“*Ancillary Assets*” means (i) the Access Easement, (ii) any and all other rights, privileges and appurtenances owned by Wingfoot, without warranty of any type, which relate to or are used in connection with the Water Rights and the assets listed in this paragraph, to the extent assignable, and (iii) all of Wingfoot’s right, title and interest, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development or use of the assets described in this paragraph.

“*Assets*” means (i) the Property, (ii) the Existing Improvements, and (iii) the State Land Board Lease and related agreements, if any.

“*Assignment and Assumption*” means the assignment and assumption of the State Land Board Lease, substantially in the form attached as Exhibit D.

“*Association*” has the meaning given in Recital A.

“*Base Amount*” has the meaning given in Section 10.5.B.

“*Call Notice*” has the meaning given in Section 11.1.A.

“*Call Option*” has the meaning given in Section 11.1.A.

“*Cash Contribution*” has the meaning given in Section 9.1.

“*Certificate*” means and refers to that document evidencing the ownership of a Raw Water Credit(s) (defined below), in the form attached as Exhibit E.

“*City*” has the meaning given in the preamble of this Agreement.

“*Closing*” has the meaning given in Section 6.2.

“*Claim*” has the meaning given in Section 5.6.

“*Closing Amount*” has the meaning given in Section 3.4.

“*Closing Date*” has the meaning given in Section 6.2.

“*Closing Documents*” has the meaning given in Section 6.3.B.

“*Confidential*” has the meaning given in Section 10.4.

“*Construction Escrow Agreement*” has the meaning given in Section 9.1.

“*Construction Escrow*” has the meaning given in Section 9.1.

“*Contribution Deadline*” has the meaning given in Section 9.1.A.

“*Conveyance Documents*” has the meaning given in Section 4.3.

“*Credit Escrow*” has the meaning given in Section 11.2.

“*Credit Escrow Agent*” has the meaning given in Section 11.2.

“*Credit Event*” means any of the following events or conditions: If a Party or any successor shall institute voluntary bankruptcy proceedings, or shall consent to the institution of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the federal Bankruptcy Code or any similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee in bankruptcy or insolvency of such Party or any successor or any of their properties, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“*Cure*” has the meaning given in Section 4.4.

“*Defect*” has the meaning given in Section 5.4.

“*Defect Notice*” has the meaning given in Section 5.4.

“*Department*” has the meaning given in Section 10.3.A.

“*Deposit*” has the meaning given in Section 3.2.

“*Deposit Obligations*” has the meaning given in Section 9.1.B.

“*Disapproved Matters*” has the meaning given in Section 4.4.

“*Effective Date*” has the meaning given in the preamble to this Agreement.

“*Enterprise*” means the Water Enterprise.

“*Environment*” means any water or water vapor, land surface or subsurface, soil, air, fish, wildlife, biota and all other natural resources.

“*Environmental Condition*” means the presence in the Environment of any Hazardous Substances at a level which exceeds any applicable standard or threshold under any Environmental Law or otherwise requires investigation or remediation (including investigation, study, health or risk assessment, monitoring, removal, treatment or transport) under any applicable Environmental Laws.

“*Environmental Laws*” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, permits, and codes relating to the protection of the Environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substance and the rules, regulations, policies, guidelines, interpretations, decisions, orders, permit conditions, and directives of federal, state and local government agencies and authorities with respect thereto.

“*Environmental Permits*” means all permits, licenses, approvals, authorizations, consents or registrations, if any, required by any Environmental Laws in connection with the ownership, use or operation of the Assets for the storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substance or the sale, transfer or conveyance of the Assets at Closing.

“*Environmental Representations and Warranties*” means the representations and warranties contained in Exhibits G and H.

“*Escrowed Credits*” has the meaning given in Section 11.2.

“*Event of Default*” means each of the events described in Section 14.1

“*Exercise Event*” has the meaning given in Section 11.5.

“*Exercise Price*” has the meaning given in Section 11.4.

“*Exercised Credits*” has the meaning given in Section 11.4.

“*Existing Improvements*” means any structures, facilities or other improvements existing on Terry Ranch on the Effective Date as shown on Exhibit I.

“*General Representations and Warranties*” means the representations and warranties contained in Exhibits J and K.

“*Governmental Approval Period*” has the meaning given in Section 6.1.A.

“*Governing Bodies*” has the meaning given in Section 6.1.A.

“*Greeley*” has the meaning given in the preamble of this Agreement, which refers to the City acting by and through its Water Enterprise.

“*Greeley Environmental Covenants*” has the meaning given in Section 5.5.

“*Greeley’s Intended Use*” means the use to which Greeley intends to put the Assets, which consists of the delivery of water to and from the nontributary aquifer underlying Terry Ranch, including the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated as a part of Greeley’s Water System.

“*Greeley’s TIC Interest*” means Greeley’s ownership interest, as it may exist from time to time, in the Property held in the tenancy in common¹ created pursuant to Section 2.1 and the Tenancy in Common Agreement.

“*Hazardous Substance*” means, without limitation, any flammable materials, explosives, radon, radioactive materials (including naturally occurring radioactive materials (“NORM”) that have been concentrated by industrial or commercial processes), asbestos, urea formaldehyde foam insulation, oil, polychlorinated biphenyls, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or pollutants or contaminants, including those defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) (“CERCLA”), the Clean Water Act, as amended (33 U.S.C. Section 1251 to 1387), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), any other applicable Environmental Law and regulations adopted thereunder, or any State or local law or ordinance relating to environmental risk or exposure.

“*Improvements*” means the Existing Improvements and any structures, facilities or other improvements installed by Greeley during the Inspection Period.

“*Initial Contribution*” has the meaning given in Section 9.1.A.

“*Initial Credits*” has the meaning given in Section 3.1.

“*Initial Tenancy in Common Interest*” means and refers to 10/12,121th interest in the Property to be conveyed by Wingfoot to Greeley at Closing.

“*Inspection Costs*” has the meaning given in Section 5.2.

“*Inspection Indemnification*” has the meaning given in Section 5.6.

“*Inspection Period*” has the meaning given in Section 5.1.

“*Inspections*” has the meaning given in Section 5.1.

“*Interim Period*” has the meaning given in Section 8.2.A.

“*Liquidated Damages*” has the meaning given in Section 14.3.

“*Losses*” has the meaning given in Section 5.6.

“*Material Adverse Effect*” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the ability of Wingfoot or Greeley to perform the actions contemplated in this Agreement

¹ Note to Greeley: TIC was not a defined term, but we have now included Tenancy in Common Agreement as defined term and revised this to fix that issue.

in a timely manner or (b) the identified property right, title or interest or right title or interest created by and through this Agreement, viewed together as a whole with all rights or interests of the applicable party arising from the transactions expressly set forth in this Agreement (including, but not limited to, with respect to (i) Greeley, the Assets transferred to Greeley hereunder, and (ii) Wingfoot, the market value of a Raw Water Credit or Wingfoot's right or ability to receive the cash price under Article 11 or exercise of the Put Option or Call Option hereunder).

“*Material Part*” has the meaning given in Article 15.

“*Net Cash Proceeds*” means, as the case may be, (a) the cash received by Wingfoot from (i) any Third Party Transfer as provided under Section 8.2.A (Conveyances), except for any cash proceeds from a Prohibited Transfer Fee; (ii) the sale of Raw Water Credits to third-parties as provided under Section 10.1.E (Limitations; Sales); or (iii) the portion of Net Revenue received by Wingfoot pursuant to Section 12.1.A (Revenue Sharing). “*Net Cash Proceeds*” excludes any portion of the Power Revenue Interest received by Wingfoot and amounts paid to Wingfoot pursuant to Section 12.1.B (Revenue Sharing; Outside Customers).

“*Net Revenue*” has the meaning given in Section 12.1.

“*New Source*” has the meaning given in Section 10.5.A(2).

“*Notice to Construct*” has the meaning given in Section 9.1.A.

“*Objection*” has the meaning given in Section 10.5.A(2).

“*Off-Record Documents*” has the meaning given in Section 4.1.B.

“*Option Period*” has the meaning given in Section 11.1.A.

“*Option Price*” means an amount equal to thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 or thirty thousand dollars (\$30,000) escalated at a rate of three percent (3%) compounded annually every year thereafter.

“*Parties*” and “*Party*” have the meanings given in the preamble of this Agreement.

“*Payment Default*” has the meaning given in Section 9.2.B.

“*Payment Obligation*” means the payment obligations of Greeley described in Section 17.18.

“*Permissible Policy Change*” has the meaning given in Section 10.5.A(2)(c)(i).

“*Permitted Exceptions*” has the meaning given in Section 4.2.

“*Power Revenue Interest*” has the meaning given in Section 12.1.A.

“*Power Transaction*” has the meaning given in Section 12.1.A.

“*Power Valuation*” has the meaning given in Section 12.1.A.

“*Prevailing Party*” has the meaning given under Section 17.6.

“*Prohibited Transfer Fee*” has the meaning given in Section 8.2.A.

“*Project*” means and refers to the acquisition and construction of groundwater wells, treatment and storage facilities, transmission system, and other improvements made or necessary to deliver water to and from the nontributary aquifer underlying Terry Ranch to and from Greeley’s Water System, including without limitation the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated by the Enterprise as a part of the Water System.

“*Project Infrastructure*” means and refers to all easements, rights of way, wells, pipeline, treatment facilities and other improvements, facilities and real or personal property deemed necessary, in the exclusive judgment of Greeley, to effectuate the Project or otherwise used in or relating to the Project.

“*Project Infrastructure Costs*” has the meaning given in Section 9.1.

“*Property*” means and refers to the (i) Water Rights and (ii) Ancillary Assets.

“*Prorated Contribution*” has the meaning given in Section 9.1.C.

“*Prorated Escrow*” has the meaning given in Section 9.1.C.

“*Purchase Price*” has the meaning given in Section 3.1.

“*Put Notice*” has the meaning given in Section 11.1.B.

“*Put Option*” has the meaning given in Section 11.1.B.

“*Raw Water Credit*” has the meaning given in Section 10.1.A.

“*Raw Water Dedication Policy*” means and refers to the policy with respect to dedications of raw water or cash payments in lieu thereof established by Chapter 14.06 of the Greeley Municipal Code as in effect on the Closing Date.

“*Records*” has the meaning giving in Recital A.

“*Registry*” has the meaning given in Section 10.3.A.

“*Registry Default*” has the meaning given in Section 10.4.B.

“*Registered Owner*” has the meaning given in Section 10.3.A.

“*Registered Owner Committee*” has the meaning given in Section 10.5.A.2.

“*Release*” has the meaning given to that term in CERCLA and the regulations promulgated thereunder.

“*Released Credits*” has the meaning given in Section 11.3.

“*Semester Total*” has the meaning given in Section 10.2.

“*Service Area*” means and refers to that area within which Greeley provides water services as of Closing, inclusive of any expansions of the Service Area subsequent to the Closing, as well as areas served by other water districts that accept Raw Water Credits in the future in accordance with the Raw Water Dedication Policy or any similar policy recognized by another water district.

“*Specified Difference*” has the meaning given in Section 10.5.B.

“*State Land Board Lease*” has the meaning given in Recital C.

“*Surplus Revenues*” has the meaning given in Section 17.18.B.

“*Surrendered Certificate*” has the meaning given in Section 11.5.

“*Tenancy in Common Agreement*” means and refers to that agreement substantially in the form attached as Exhibit L.

“*Tenancy in Common Conveyance Documents*” has the meaning given in Section 8.2.B.

“*Terry Ranch*” has the meaning given in Recital A.

“*Third Party Transfer*” has the meaning given in Section 8.2.A.

“*Title Commitment*” has the meaning given in Section 4.1.A.

“*Title Company*” has the meaning given in Section 3.2.

“*Title Documents*” has the meaning given in Section 4.1.A.

“*Title Policy*” has the meaning given in Section 4.6.

“*Transferee*” has the meaning given in Section 11.7.

“*Water Enterprise*” or “*Enterprise*” means the water utility enterprise created pursuant to Greeley Code Section 14.04.050 to act as operator of the Water system.

“*Water Revenue Bond Ordinance*” has the meaning given in Section 17.18.B.

“*Water Rights Documents*” has the meaning given in Section 4.1.C.

“*Water System*” means Greeley’s municipal water system, operated by the Water Enterprise.

“*Water Rights*” means those water rights defined under Recital A.

“*Wingfoot’s TIC Interest*” means the balance of Wingfoot’s tenancy in common interest in the Property.

ARTICLE 2
CREATION OF TENANCY IN COMMON; SALE OF PROPERTY

2.1 Water Rights; Creation of Tenancy in Common. Wingfoot agrees to create a tenancy in common for the Property with Greeley and agrees to sell, and Greeley agrees to buy, the Initial Tenancy in Common Interest at Closing (defined below), subject to the terms and conditions set forth in this Agreement and the Special Warranty Deed substantially in the form attached as Exhibit M and the Assignment and Assumption of Access Easement substantially in the form attached as Exhibit N.

2.2 Improvements. In addition to the Initial Tenancy in Common Interest, Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in and to the Existing Improvements at Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Bill of Sale substantially in the form attached as Exhibit O (the “General Assignment and Bill of Sale”).

2.3 State Land Board Lease and Related Agreements. Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in, to and under the State Land Board Lease and any related agreements, if any, on or before ninety (90) days after Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Assumption substantially in the form attached as Exhibit D. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the form of the Assignment and Assumption attached hereto may be subject to revision as may be necessary or convenient to obtain consent to such assignment from the State of Colorado, State Board of Land Commissioners.

ARTICLE 3
PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Initial Tenancy in Common Interest and Assignment and Assumption shall be an amount equal to the sum of Five Hundred Thousand Dollars (\$500,000) (“Purchase Price”) plus ten (10) Raw Water Credits (“Initial Credits”).

3.2 Deposit and Release of Deposit. Within fifteen (15) days following the Effective Date of this Agreement, Greeley shall cause the amount of Fifty Thousand Dollars (\$50,000) (“Deposit”) to be deposited with Land Title Guaranty (Heidi Crue: title officer; Donna Mancini: closing agent), (“Title Company”). The Deposit shall be held by the Title Company in a federally insured account to be credited toward the Purchase Price. The Deposit shall be fully refundable to Greeley pursuant to and in accordance with Section 4.4 (Disapproved Title Matters), Section 5.4 (Defects Identified in Inspection), Section 6.1 (Closing Contingencies), Section 13.3 (Failure of Condition), Section 14.2.A(3) (Remedies, Generally) and Article 15 (Condemnation) below. Except as set forth in the preceding sentence, the Deposit shall be non-

refundable to Greeley and shall be transferred to Wingfoot at Closing or upon termination of this Agreement.

3.3 Interest. Unless otherwise agreed to by Wingfoot and Greeley, the Title Company is not required to hold the Deposit in an interest-bearing account.

3.4 Payment at Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing (including Greeley's share of the closing costs); and (iii) plus or minus any prorations or credits pursuant to this Agreement ("Closing Amount"), shall be paid at Closing by Greeley to Wingfoot by cashier's check, wire transfer or other immediately available funds.

ARTICLE 4 TITLE

4.1 Title Documents. Within fifteen (15) days after the Effective Date of this Agreement, Wingfoot shall provide the following to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company covering the Access Easement and indicating the Title Company's willingness to issue to Greeley at Closing the Title Policy (defined below) in the amount of the Purchase Price, with such Title Commitment setting forth the status of title to the Access Easement and showing the Title Company's search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Access Easement (the copies of all recorded documents in the Title Commitment are collectively referred to as "Title Documents").

B. To the extent the same are in Wingfoot's possession and are not delivered in connection with the Title Documents provided by the Title Company, true and correct copies of the following documents: (i) well permits, together with any applications, approvals, engineering drawings or other documents related thereto; (ii) other agreements in Wingfoot's possession having a Material Adverse Effect upon the Assets; (iii) any surveys related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; (iv) any investigation or inspection documents or reports related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; (v) feasibility and design studies or engineering reports related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; and (vi) any as-built surveys of infrastructure or other improvements located on Terry Ranch (collectively referred to as "Off-Record Documents").

C. To the extent the same are in Wingfoot's possession and are not delivered in connection with the Title Documents provided by the Title Company, true and correct copies of the following documents: any documents, recorded or unrecorded, that relate to the title, planning and development, use, quantity, quality and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Wingfoot pertaining to the Water Rights; and copies of all contracts or other agreements relating to the

development, operation, maintenance or leasing of the Water Rights (collectively referred to as “Water Rights Documents”).

4.2 Condition of Title. At Closing, Wingfoot shall convey, and Greeley agrees to accept, title to the Access Easement free and clear of all liens and encumbrances subject only to each of the following (collectively, the “Permitted Exceptions”):

A. All covenants, easements, agreements, restrictions and other recorded documents set forth in the Title Commitment, EXCEPT FOR: (i) mortgages, mechanic’s liens and other financial encumbrances created by Wingfoot, which shall be discharged or, in the event of a mechanic’s lien, otherwise bonded off through a surety bond at Closing by Wingfoot and (ii) easements, rights of way, servitudes, licenses, permits, orders, authorizations, franchises, and related instruments or rights relating to the ownership, operation, or use of the Access Easement, that (x) Greeley has disapproved of as Disapproved Matters which Wingfoot has committed to Cure or (y) individually or in the aggregate have a Material Adverse Effect on the Access Easement as of the Closing Date, EXCEPT to the extent any of the foregoing were created by Greeley or arose out of Greeley’s access to or use of the Assets.

B. General property taxes, if applicable, for the year of the Closing, provided that such taxes shall be prorated to the Closing Date, as provided in Section 7.1 (Prorations) below.

C. Approvals, consents, notices, filings, permits, or other actions by or from a governmental authority or third party in connection with the contemplated sale or conveyance of the Assets under this Agreement prior to Closing, EXCEPT FOR such approvals, consents, notices, filings, permits, or other actions by or from a governmental authority or third party, individually or in the aggregate, that as of the Closing Date have a Material Adverse Effect on the Assets.

D. Rights reserved to or vested in any governmental authority to control or regulate any of the Assets in any manner, and all obligations and duties under all applicable laws or under any franchise, grant, license, or permit issued by any such governmental authority.

E. Any Disapproved Matter that becomes a Permitted Exception in accordance with the terms of this Agreement.

F. Any other matter created by or through Greeley or arising out of Greeley’s ownership of or access to or use of the Assets including, without limitation, any matter arising out of any inspections conducted by or for the benefit of Greeley during the Inspection Period.

4.3 Conveyance of the Initial Tenancy in Common Interest. At Closing, Wingfoot shall convey the Initial Tenancy in Common Interest to Greeley by executing the forms attached hereto as Exhibit M (Special Warranty Deed) and Exhibit N (Assignment and Assumption of Access Easement), free and clear of all liens except for the Permitted Exceptions (“Conveyance Documents”).

4.4 Disapproved Title Matters. Except for Permitted Exceptions, Greeley may disapprove of title exceptions (“Disapproved Matter”) by delivering written notice of objection to Wingfoot either (i) prior to the expiration of the Inspection Period or (ii) if such notice is delivered after the expiration of the Inspection Period but prior to the Closing Date, then within ten days (10) days after receiving notice from Wingfoot or the Title Company. Any Disapproved Matter not objected to in writing prior to the expiration of the Inspection Period or within such ten (10) day period shall be deemed an additional Permitted Exception. Wingfoot may elect in its sole discretion (but shall not be obligated) to cure any Disapproved Matter by (i) removing or causing the Disapproved Matter to be removed or resolved at Wingfoot’s expense; (ii) by obtaining title insurance insuring against the effect of the Disapproved Matter; or (iii) by any other means acceptable to Greeley (each a “Cure”). Within ten (10) days after Wingfoot’s receipt of Greeley’s notice of a Disapproved Matter, Wingfoot shall notify Greeley in writing whether Wingfoot elects to Cure such Disapproved Matter and, if it elects to do so, the method or means of the Cure. If Wingfoot elects, but fails or is unable to Cure a Disapproved Matter prior to Closing, then Greeley may, on the date of Closing, deliver written notice to Wingfoot that it elects to terminate this Agreement. If Wingfoot elects not to Cure one (1) or more Disapproved Matter, then within (i) ten (10) days after Greeley’s receipt of Wingfoot’s written notice regarding such election, or (ii) on the Closing Date, whichever occurs first in time, Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot that it elects to terminate this Agreement. Upon termination of this Agreement pursuant to this Section 4.4, the Deposit shall be returned to Greeley and neither Wingfoot nor Greeley shall have any further obligation or liability to the other, provided, however, that where a Disapproved Matter would have a Material Adverse Effect on the Assets, and where such Disapproved Matter is not Cured, then the Deposit shall be returned to Greeley and Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, including but not limited to the Inspection Costs. If Greeley does not elect to terminate this Agreement pursuant to this Section 4.4, then Greeley shall be deemed to have accepted any outstanding Disapproved Matters and the Parties shall proceed to Closing, subject to the provisions of this Agreement, without any abatement of the Purchase Price or other remedy.

4.5 Representations and Warranties. On the Effective Date of this Agreement, Wingfoot shall execute and deliver to Greeley the certifications relating to the General Representations and Warranties and the Environmental Representations and Warranties substantially in the forms attached as Exhibits J and G. At the Closing, Wingfoot shall certify that the representations made in the General Representations and Warranties, and the Environmental Representations and Warranties, are true and correct in all material respects as of the Closing Date (defined below) substantially in the forms attached as Exhibits J and G. On the Effective Date of this Agreement, Greeley shall execute and deliver to Wingfoot the certifications relating to the General Representations and Warranties substantially in the form attached as Exhibit K. At Closing, Greeley shall (i) execute and deliver to Wingfoot the certifications relating to the Environmental Representations and Warranties and (ii) certify that the representations made in the General Representations and Warranties are true and correct in all material respects as of the Closing Date, substantially in the forms attached as Exhibits K and H.

4.6 Title Insurance. The Title Company shall commit at Closing that, as soon as reasonably practical after the Closing, the Title Company shall issue to Greeley an ALTA owner's form of title insurance policy, insuring that title to the Access Easement is vested in Greeley and Wingfoot, as tenants in common, subject to the Permitted Exceptions ("Title Policy").

ARTICLE 5 INSPECTION PERIOD

5.1 Inspection. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the Two Hundred and Tenth (210th) day thereafter ("Inspection Period"), subject to Section 5.3 (Conditions of Access), Greeley and its authorized agents, representatives and consultants shall be entitled to enter upon the areas covered by the Access Easement and State Land Board Lease at reasonable times, and upon reasonable prior written notice to Wingfoot, to inspect the Assets for the purpose of (i) conducting surveys, water quality and soils tests, environmental and ecological assessments, test borings, engineering tests, cost evaluations, environmental audits and tests, feasibility studies and any other inspections, investigations or analyses Greeley deems necessary or appropriate in connection with its intended acquisition, use and development of the Assets or (ii) performing the following specific activities: drilling and logging of not more than three additional test borings; collection and analysis of water quality samples from test borings and existing wells; depth-specific flow, Gamma ray spectroscopic surveys, and water quality sampling of existing wells; downhole video survey of existing wells; topographical surveys; environmental assessments and field surveys of environmental resources; and bench-scale testing of geochemical interactions between aquifer core samples and recharge water, which activities Greeley has deemed necessary to conduct in connection with its intended acquisition, use and development of the Assets (collectively referred to as the "Inspections").

5.2 Cost; Cooperation. Greeley shall bear all costs of the Inspections ("Inspection Costs"). During the Inspection Period, Wingfoot agrees to reasonably cooperate with any Inspection activity, which includes but is not limited to attempts to obtain access and any necessary approval to conduct Inspections on Terry Ranch. In the event that Closing does not occur solely due to failure of a Closing condition in Section 13.3 (Failure of Condition) within Wingfoot's control, then Wingfoot shall reimburse Greeley for its reasonable third party out-of-pocket Inspection Costs.

5.3 Conditions of Access. Greeley and its authorized agents, representatives and consultants shall (i) comply with the terms and conditions of the Access Easement and State Land Board Lease including but not limited to all required notices and submissions, as applicable, and all applicable laws, rules and regulations; (ii) not interfere with the operation and maintenance of the Terry Ranch by the Association or interfere with the business or operations of Wingfoot; (iii) comply with all Title Documents, all Permitted Exceptions, and any reasonable requirements imposed upon it by Wingfoot or the Association in connection with such Inspections; (iv) not injure or otherwise cause bodily harm to Wingfoot or the Association, their agents, contractors or employees; (v) promptly pay when due the costs of all Inspections; (vi) not permit any liens or encumbrances to attach to Terry Ranch or any of the Assets; (vii) restore Terry Ranch, the Property, the State Land Board Lease, and/or the Assets to substantially the

same condition in which such property was found before any such Inspections were undertaken, and at the election of Wingfoot (in its sole discretion), Greeley shall be required to remove (at Greeley's sole cost and expense) any improvement that was installed, and/or reclaim any surface disturbance, including close or seal disturbances related to below grade improvements consistent with standard industry practice, in accordance with this Section 5.3 (or with the written approval of Wingfoot) by Greeley during the Inspection Period in accordance with the terms of the Access Easement or the State Land Board Lease, as the case may be, or with Wingfoot's approval, except that Greeley shall not be required to remove any below grade improvements associated with test bores; and (viii) give reasonable advance notice (but no less than 24 hours) to Wingfoot and the Association prior to any entry onto Terry Ranch, the Access Easement, the State Land Board Lease, the Property or the Assets and shall permit Wingfoot to have representatives present during all Inspections. Upon the request of Wingfoot, Greeley shall supply Wingfoot with copies of the results of the Inspections.

5.4 Defects Identified in Inspection. If Greeley identifies any defect with the Assets during its Inspection, as determined by Greeley in its good faith judgment, including but not limited to the following items:

A. Matters disclosed in (i) the Title Documents, (ii) the Off-Record Documents, or (iii) the Water Rights Documents;

B. Greeley's ability to verify or obtain real property including but not limited to adequate sites for facilities or appropriate easements for ingress, egress and utilities from third parties as deemed reasonably necessary or appropriate by Greeley for Greeley's Intended Use of the Assets;

C. The suitability of the Assets for Greeley's Intended Use, including without limitation the capital and/or operational cost of effectuating such Intended Use;

D. Greeley's ability to obtain state, local or federal approval and/or permits to construct improvements for the operation of an aquifer storage facility;

(each a "Defect"). Greeley may terminate this Agreement if (i) Greeley provides written notice of any such Defect to Wingfoot on or before the expiration of the Inspection Period (a "Defect Notice") and (ii) Wingfoot fails to cure, to Greeley's reasonable satisfaction, any Defect identified in the Defect Notice within thirty (30) days of receipt of the applicable Defect Notice. If Greeley terminates this Agreement pursuant to this Section 5.4, the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other except as specifically provided in this Agreement.

If Greeley does not provide written notice of termination to Wingfoot prior to the expiration of the Inspection Period, then Greeley's right to terminate this Agreement pursuant to this Section 5.4 shall terminate and Greeley shall be deemed to have accepted any outstanding Defects. Except as provided under Section 4.4 (Disapproved Title Matters), Section 6.1 (Closing Contingencies), Section 13.3 (Failure of Condition), Section 14.2.A(3) (Remedies, Generally) and Article 15 (Condemnation), upon the expiration of Greeley's right to terminate this Agreement pursuant to this Section 5.4 the Deposit shall be non-refundable to Greeley.

5.5 Environmental Covenants During Inspection Period. During the Inspection Period, Greeley covenants as follows (collectively, "Greeley Environmental Covenants"):

A. Greeley and its agents shall not bring onto the Assets, or permit to be brought onto the Assets, any Hazardous Substances, except to the extent that the Hazardous Substances are of a type and quantity the presence, use, storage, release and handling of which does not constitute a violation of any applicable Environmental Law and is customarily employed in the ordinary course of, or associated with, drilling for water and water treatment and construction of infrastructure relating to the same in the State of Colorado (and, to the extent that Greeley or its agents or representatives bring Hazardous Substances onto the Assets, they shall act prudently and use reasonable care relating thereto).

B. Greeley's use of and activities on or with respect to the Assets shall comply with all applicable laws, including Environmental Laws and Environmental Permits.

5.6 Liability During Inspection Period. Subject to Section 5.2(Cost; Cooperation), with respect to Greeley's Inspections during the Inspection Period only, Wingfoot shall defend, indemnify and hold harmless Greeley from and against any loss, cost, liability, or expense claimed by a third party arising out of or related to an Environmental Condition (collectively, "Losses"), but only to the extent that any such Environmental Condition was discovered by Greeley during the Inspection Period and disclosed to Wingfoot during the Inspection Period, and was not caused or contributed to by any negligent activity of Greeley or its agents (such indemnification obligation referred to as the "Inspection Indemnification"). If a Claim for Losses is asserted against Greeley by a third party prior to Closing, which may give rise to Inspection Indemnification, Greeley must promptly notify Wingfoot in writing and give Wingfoot the right to defend (or in Wingfoot's discretion, assist in the defense of) such Claim with counsel approved by Greeley, which approval shall not be unreasonably withheld, conditioned or delayed. The Inspection Indemnification shall terminate at Closing, and no claims for Inspection Indemnification can be made by Greeley after Closing; provided, however, that Wingfoot must still satisfy or resolve any outstanding Claim as may exist at Closing except to the extent caused by the negligence of Greeley or its agents. As used in this Section 5.6, "Claim" means any written demands, causes of action, or claims of any kind and character made by a third party. This Section 5.6 does not apply to any actions taken with respect to the Assets that does not occur during the Inspection Period and does not apply to any Claim to the extent caused by or arising from Greeley or its agents.

ARTICLE 6 CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies.

A. Governing Body Approval. Greeley's obligation to purchase the Assets is subject to the City Council's and the Greeley Water and Sewer Board's (the "Governing Bodies") authorization to close on the purchase and the appropriation of the Purchase Price at Closing for the acquisition of the Assets within sixty (60) days following the expiration of the Inspection Period ("Governmental Approval Period"). In the event that the Governing Bodies have not authorized the closing and appropriated Purchase Price at Closing for the acquisition of

the Assets prior to the expiration of the Governmental Approval Period (unless extended by written agreement of the Parties), then, in such event, upon written notice by either Party to the other, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

B. Raw Water Dedication Policy. Wingfoot's obligation to convey the Assets is subject to the Governing Bodies' approval of the Raw Water Dedication Policy, in a form acceptable to Wingfoot, before the expiration of the Governmental Approval Period. In the event that the Governing Bodies have not approved the Raw Water Dedication Policy prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by Wingfoot to Greeley, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

6.2 Closing. The closing of this transaction (the "Closing") shall occur at 1:30 p.m. at the Greeley Office of the Title Company, fifteen (15) days after the expiration of the Governmental Approval Period or such other date as the Parties may mutually agree to in writing (the "Closing Date"). At or prior to the Closing, Greeley shall provide Wingfoot with a map of the Service Area as of the Closing Date.

6.3 Transactions at Closing.

A. On or before the Closing Date, Wingfoot shall deliver or cause to be delivered to the Title Company, acting as the escrow agent for the Closing, the following documents duly executed and acknowledged where appropriate:

- (1) The Conveyance Documents.
- (2) A Certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any Certificates required pursuant to Colorado law.
- (3) The Construction Escrow Agreement (defined below)
- (4) The Credit Escrow Agreement (defined below).
- (5) The Tenancy in Common Agreement (defined below).
- (6) The General Assignment and Bill of Sale.
- (7) Wingfoot's Certification of the General Representations and Warranties, in the form attached hereto as Exhibit J.
- (8) Wingfoot's Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit G.

(9) Wingfoot's Amended and Restated Limited Liability Company Agreement, in the form attached hereto as Exhibit P.

(10) A closing statement executed by Wingfoot.

(11) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

B. On or before the Closing Date, Greeley shall deliver to the Title Company, acting as the Closing escrow agent, the following documents duly executed and acknowledged where appropriate:

(1) The Closing Amount.

(2) Documentation in such form as may be satisfactory to Wingfoot and the Title Company, evidencing (i) the Governing Bodies' authorization of the issuance of Twelve Thousand One Hundred Twenty-one (12,121) Raw Water Credits and (ii) Greeley's authority to purchase the Assets.

(3) Greeley's Certification of the General Representations and Warranties, in the form attached hereto as Exhibit K.

(4) Greeley's Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit H.

(5) A certified copy of the Raw Water Dedication Policy (defined below).

(6) The Construction Escrow Agreement.

(7) The Credit Escrow Agreement.

(8) The Tenancy in Common Agreement.

(9) A closing statement executed by Greeley.

(10) The Certificates evidencing Wingfoot's ownership of the Initial Credits.

(11) The Certificates evidencing all of the Escrowed Credits (defined below).

(12) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

Collectively, except for the Initial Credits, all other documents identified under Sections 6.3.A and 6.3.B shall be referred to as the "Closing Documents."

C. Closing Agent. The Title Company shall record and/or distribute the Closing Documents and shall hold, in escrow, the Certificates evidencing Wingfoot's ownership of the Initial Credits until Wingfoot has satisfied its Initial Contribution obligation. When Wingfoot has satisfied its Initial Contribution obligation, the Parties shall instruct the Escrow Agent to release such Certificates to Wingfoot.

ARTICLE 7
PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Assets, if any, for the calendar year in which the Closing occurs shall be prorated at the Closing on the basis of the most recent mill levy, unless the actual real estate taxes for the current year are known on the Closing Date. Wingfoot shall pay any special assessments against the Assets, if any, in full at the time of Closing. Prorations of taxes and assessments at Closing shall be a final settlement. All fees and payments for the current year due under the State Land Board Lease shall be prorated as of the Closing Date, based on the most recent payment provided by Wingfoot to the State of Colorado, State Board of Land Commissioners.

7.2 Closing Costs. Greeley shall pay for the cost of recording of all of the deeds, all title insurance endorsements and one-half (1/2) of the Title Company closing costs. Wingfoot shall pay the initial basic premium for the Title Policy, and one-half (1/2) of the Title Company closing costs. Each party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any real estate escrow fees to the Title Company.

ARTICLE 8
TENANCY IN COMMON

8.1 Tenancy in Common Agreement. The form of Tenancy in Common Agreement is attached hereto as Exhibit L.

8.2 Conveyance of the Tenancy in Common Interest.

A. Conveyances. Subject to Greeley's consent and except as otherwise provided in this Section 8.2.A, Wingfoot may convey all or any portion of Wingfoot's TIC Interest to a third-party (a "Third Party Transfer"), provided that the Third Party Transfer (1) identifies Greeley as a party to the agreement between Wingfoot and the third-party; (2) obligates the third-party to simultaneously convey its entire interest in the Property to Greeley in exchange for a number of Raw Water Credits bearing the same proportion to the total number of Raw Water Credits as the fractional interest conveyed in the Property bears to the entire interest in the Property; (3) identifies the full cash consideration for such portion and such amount is certified to Greeley by Wingfoot and shown in the property declaration with respect to such Third Party Transfer; (4) shall not obligate Greeley to accept title to any property other than the Property and (5) requires conveyance to Greeley consistent with the Tenancy in Common Conveyance Documents defined in Section 8.2.B (Form of Conveyance). If Wingfoot has not fully satisfied its Cash Contribution obligation on the date of the closing of any Third Party Transfer, then Wingfoot shall deposit in the Construction Escrow at closing the lesser of (a) its then remaining Cash Contribution obligation, or (b) ninety percent (90%) of the Net Cash

Proceeds. Notwithstanding the foregoing, Wingfoot may not convey Wingfoot's TIC Interest in a cashless exchange for like property. If and when the proposed Third Party Transfer is consistent with the conditions set forth in clauses (1) – (5) in all material respects, then Greeley shall present the same to the Greeley Water and Sewer Board for approval within forty-five (45) days after receipt by Greeley of a purchase and sale agreement relating to such Third Party Transfer (the "Interim Period"). If the Greeley Water and Sewer Board rejects or does not approve the proposed Third Party Transfer within the Interim Period, then within twenty (20) days after the earlier of (x) Greeley Water and Sewer Board's rejection of the proposed Third Party Transfer or (y) expiration of the Interim Period without Wingfoot's receipt of written approval of the proposed Third Party Transfer from Greeley, Greeley shall pay to Wingfoot one hundred twenty-five percent (125%) of the sales price relating to the proposed Third Party Transfer (the "Prohibited Transfer Fee") and Wingfoot shall concurrently transfer to Greeley Wingfoot's TIC Interest identified in the proposed Third Party Transfer. No portion of the Prohibited Transfer Fee shall be subject to the Deposit Obligation of Section 9.1.B (Source of Funds).

B. Form of Conveyance. Wingfoot shall convey Wingfoot's TIC Interest, and shall cause that portion of Wingfoot's TIC Interest conveyed to a third-party, if any, to be conveyed to Greeley, free and clear of all liens and encumbrances except for Permitted Exceptions, by executing the forms attached hereto as Exhibit Q (the "Tenancy in Common Conveyance Documents").

8.3 Termination of the Tenancy in Common; Ten-year limit. The Tenancy in Common shall terminate and ownership of the Property shall vest entirely in Greeley (subject to any conveyances made by, through or under Greeley) upon the earlier of (i) the transfer of one hundred percent (100%) of the ownership of the Property to Greeley or (ii) ten (10) years following the Closing Date, subject to Greeley's obligations and the other terms of this Agreement.

8.4 Use. Subject to the terms of the Tenancy in Common Agreement and Greeley's compliance with the terms of this Agreement, Wingfoot agrees that, after Closing, Greeley shall have the exclusive right to use the Property, and Wingfoot shall not access or use the Property without Greeley's written permission.

ARTICLE 9 CONSTRUCTION ESCROW

9.1 Construction Escrow. At Closing, the Parties shall execute an escrow agreement to manage the deposit and release of the Project Infrastructure funds substantially in the form attached hereto as Exhibit F (the "Construction Escrow Agreement"). Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Construction Escrow Agreement attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the escrow agent. Subject to the terms of this Agreement, Wingfoot shall deposit a total of One Hundred Twenty-Five Million Dollars (\$125,000,000) ("Cash Contribution") in an escrow account established and maintained pursuant to the Construction Escrow Agreement (the "Construction Escrow"). The Cash Contribution is estimated to cover one-half of the estimated cost to plan, develop, permit and construct the Project Infrastructure ("Project Infrastructure").

Costs”) and shall be funded and due as provided below, provided that “Project Infrastructure Costs” shall not include debt service payable by Greeley. For federal, state and local income tax purposes, notwithstanding the funding mechanism set forth in this Agreement, the Parties acknowledge that Wingfoot intends to treat the Cash Contribution as a reduction in the amount realized by Wingfoot in respect of the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, in order to reflect the fact that the Cash Contribution will reduce Wingfoot’s net economic gain derived from the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, Wingfoot does not obtain any property or derive any separate benefit from the Cash Contribution, and the benefit of the Cash Contribution inures entirely to Greeley (in the form of Project Infrastructure owned by Greeley). For example, if the gross purchase price of a Raw Water Credit is Thirty Thousand Dollars (\$30,000) and Wingfoot has not satisfied its Deposit Obligations under Section 9.2(B) (Source of Funds), then Wingfoot shall deposit ninety percent (90%) of such purchase price (Twenty Seven Thousand Dollars (\$27,000)) to the Construction Escrow as a Deposit Obligation, reducing the amount realized by Wingfoot in respect to the sale of such Raw Water Credit to Three Thousand Dollars (\$3,000). In furtherance of the foregoing, for federal, state, and local income tax purposes, (x) Wingfoot intends to treat the Initial Contribution (defined below) as an advance reduction in Wingfoot’s amount realized in respect of transfers of Wingfoot’s TIC Interest, and (y) Wingfoot may determine the extent to which a portion of the total reduction in the amount realized by Wingfoot (i.e., the total Cash Contribution, including the Initial Contribution) shall be attributed to any specific transfer of a portion of Wingfoot’s TIC Interest. It is the intent of the Parties that, to the greatest extent possible, Wingfoot shall not be treated as having an amount realized from the transfer of a portion of Wingfoot’s TIC Interest greater than the net amount of cash retained by Wingfoot in connection with that transfer, after the satisfaction of Wingfoot’s funding obligations as set forth herein. Neither Party shall take a position contrary to the positions and statements set forth in this Section 9.1.

A. Deposits Due. Within Ninety (90) days after the Closing, Wingfoot shall deposit Twenty-five Million Dollars (\$25,000,000) (“Initial Contribution”) in the Construction Escrow and provide written notice thereof to Greeley and the Title Company. The balance of the Cash Contributions shall be due on the earlier to occur of (i) twenty-four (24) months after Greeley provides written notice of its intent to construct the Project Infrastructure (“Notice to Construct”) or (ii) ten (10) years after the Closing Date (the “Contribution Deadline”). Greeley shall have no deadline or timeline to commence or complete construction of the Project Infrastructure. Notwithstanding the foregoing, Greeley may not issue the Notice to Construct sooner than two years after the Closing Date unless Wingfoot has fully satisfied its Cash Contribution obligation within such time. Wingfoot shall have no obligation to fund the Construction Escrow or the Project Infrastructure in excess of the Cash Contribution and Greeley shall be solely responsible for all costs related to the Project Infrastructure exceeding the Cash Contribution.

B. Source of Funds. Until Wingfoot has fully satisfied its Cash Contribution obligation, Wingfoot shall deposit or arrange for the deposit of ninety percent (90%) of the Net Cash Proceeds received by Wingfoot (collectively, the “Deposit Obligations”). Notwithstanding anything to the contrary in this Section 9.1.B, Wingfoot shall retain one hundred percent (100%) of the proceeds from, and the Deposit Obligations shall not include, the sale of the Exercised Credits and the Released Credits pursuant to Article 11 (Put and Call

Options) and from the Prohibited Transfer Fee. To track Wingfoot’s obligation under this Section 9.1.B Wingfoot shall, promptly after each such deposit of a Deposit Obligation, provide to Greeley (i) a settlement statement evidencing the purchase price and (ii) a statement evidencing that ninety percent (90%) of the Net Cash Proceeds has been deposited in the Construction Escrow, along with the surrendered Certificate(s) or a copy of the deed transferring the Property to a third-party pursuant to Section 8.2.A (Conveyance) until Wingfoot’s obligation to fund the Cash Contribution has been fully satisfied. If the surrendered Certificate, or portion thereof, qualifies as a Released Credit, Wingfoot may retain one hundred percent (100%) of the proceeds.

C. Greeley’s Contribution. No less than thirty (30) days before Greeley requests withdrawal of any amount from the Construction Escrow, Greeley shall deposit in an escrow account established and maintained pursuant to the Construction Escrow Agreement that is separate from the Construction Escrow (“Prorated Escrow”), an amount sufficient to maintain Greeley’s aggregate, prorated share of contributions to the total Project Infrastructure Costs at the percentages shown in the table below (the “Prorated Contributions”).

Project Infrastructure Costs			Wingfoot Portion		Greeley Portion	
From	To	Total Cost	Contribution to Total Cost	Percent of Total Cost	Contribution to Total Cost	Percent of Total Cost
\$0	\$78,125,000	\$78,125,000	\$62,500,000	80.00%	\$15,625,000	20.00%
\$78,125,000	\$203,125,000	\$125,000,000	\$62,500,000	50.00%	\$62,500,000	50.00%
Total		\$203,125,000	\$125,000,000	61.54%	\$78,125,000	38.46%

D. Release of Funds. Greeley may not draw upon the available Cash Contribution for Project Infrastructure construction costs less than ninety (90) days after the Closing Date. Any withdrawals after the 90-day period are subject to the following conditions: (i) Greeley must be in compliance with its obligation under Section 9.1.C (Greeley’s Contribution) as of the date of withdrawal, and (ii) Greeley must (a) simultaneously withdraw an amount from the Prorated Escrow proportionate to Greeley’s percent of total costs shown in the table in paragraph C of this Section 9.1.D and (b) use such funds from the Prorated Escrow and Construction Escrow solely for the planning, development, permitting and construction of Project Infrastructure. To track Greeley’s compliance with this Section 9.1.D, Greeley shall provide Wingfoot with a copy of the statement evidencing withdrawal of a proportionate amount of funds from the Prorated Contribution, prior to the release of funds from the Construction Escrow to Greeley. Upon written request from Wingfoot, Greeley shall furnish evidence that the funds withdrawn have been spent on Project Infrastructure Costs. After substantial completion of the Project Infrastructure, or upon termination of this Agreement by operation of Section 14.2.B(3) (Remedies, Generally), the balance of the Cash Contribution in the Construction Escrow, if any, remaining shall be released to Wingfoot and the balance of the Prorated Contribution, if any, remaining shall be released to Greeley.

9.2 Failure to Fund.

A. Failure to Fund the Initial Contribution. If Wingfoot fails to deposit the Initial Contribution in the Construction Escrow within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, and pursuant to Section 14.2.A(3) (Remedies, General): (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a reassignment of the State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley, including without limitation the Initial Credits, shall be immediately returned to Greeley, if any, and all documents, deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include, but not be limited to, the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement to the extent set forth in Section 17.9, for the time period(s) specified therein.

B. Failure to Fund the Cash Contribution. If Wingfoot fails to fully satisfy its Cash Contribution obligation by the Contribution Deadline, and Greeley has not (i) breached any of its obligations under Section 10.5 (Material Change to Market Value); (ii) breached any of its obligations under Section 9.1.C (Greeley's Contributions) or Section 9.1.D (Release of Funds); or (iii) committed a default or otherwise breached this Agreement that prevented or interfered with or adversely affected Wingfoot's ability to fund the Cash Contribution, then Greeley shall provide Wingfoot with written notice of such failure to satisfy Wingfoot's Cash Contribution (a "Payment Default"). If Wingfoot does not cure such Payment Default within sixty (60) days after its receipt of written notice from Greeley of such Payment Default (not subject to any additional cure period under Section 14.2.D (Remedies, Generally), then pursuant to Section 14.2.A(4) (Remedies, Generally), Greeley may elect to require that Wingfoot convey the entirety of Wingfoot's TIC Interest to Greeley, and Wingfoot shall be obligated to effect such conveyance, and Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied. Other than Raw Water Credits subject to the Put Option and Call Option as set forth in Article 11 (Put and Call Option), Greeley shall not be required to issue any additional Raw Water Credits (other than transfers of outstanding Raw Water Credits in the Registry) in exchange for a transfer of Wingfoot's TIC Interest pursuant to this Section 9.2.B.

ARTICLE 10 RAW WATER CREDITS

10.1 Raw Water Credit.

A. Authorization. At Closing, Greeley shall authorize the issuance of Twelve Thousand One Hundred Twenty-one (12,121) credits, with each credit representing the equivalent of, but not an interest in, one acre foot of raw water (each a "Raw Water Credit").

B. Issuance. After Wingfoot satisfies its Initial Contribution pursuant to Section 9.1.A (Deposit Due), Wingfoot may request the issuance to it of up to Twelve Thousand One Hundred Twenty One (12,121) Raw Water Credits (inclusive of the Initial Credits and the Escrowed Credits) at any time prior to the date which is ten (10) years after the Closing Date. If any Raw Water Credits remain unissued as of the date which is ten (10) years after the Closing Date, then all remaining unissued Raw Water Credits shall be issued to Wingfoot in consideration of Wingfoot transferring Wingfoot's TIC Interest to Greeley pursuant to Section 10.2 (Transfer of Tenancy in Common Interest) as of that date.

C. Form. The issuance of all Raw Water Credits shall be documented by the delivery of certificates in the form attached as Exhibit E (each a "Certificate"). A single Certificate may represent any whole number of Raw Water Credits. Each Certificate shall evidence the rights of the original or any subsequent Registered Owner (defined below) thereof with respect to the Raw Water Credits evidenced thereby.

D. Redemption Period. The form of Certificate shall provide that any Registered Owner may redeem a Raw Water Credit from Greeley through December 31, 2099, subject to the terms and conditions of the Certificate and the Raw Water Dedication Policy.

E. Limitations; Sales. All Raw Water Credits issued to Wingfoot shall be subject to Section 10.2 (Transfer of Tenancy in Common Interest). After issuance, Wingfoot may sell, convey, or transfer a Raw Water Credit to a third-party, subject to Section 9.1.B (Source of Funds). All Registered Owners, including Wingfoot, may freely sell, transfer, or convey Raw Water Credits to third-parties subject to compliance with Section 10.3 (Administration; Tracking).

10.2 Transfer of the Tenancy in Common Interest. Greeley's issuance of a Raw Water Credit to Wingfoot shall obligate Wingfoot to convey an amount of Wingfoot's TIC Interest to Greeley as described in this Section 10.2. Wingfoot shall satisfy this obligation on a semiannual basis. On February 1 and August 1 of each year, Greeley and Wingfoot shall calculate the total number of Raw Water Credits issued to Wingfoot and the total number of Raw Water Credits released from the Credit Escrow pursuant to Article 11 during the preceding six months, but excluding the amount issued to a third-party pursuant to Section 8.2A (Conveyance) ("collectively, the Semester Total"). By each February 15 and August 15, Wingfoot shall convey to Greeley a fraction of the total interests in the Property (out of Wingfoot's TIC Interest) with the (i) numerator being equal to the Semester Total and (ii) denominator being twelve thousand one hundred twenty-one (12,121) (i.e., the total authorized number of Raw Water Credits). Wingfoot shall convey any portion of Wingfoot's TIC Interest to Greeley in accordance with the terms and conditions of the Tenancy in Common Agreement and Section 8.2.B (Form of Conveyance). Upon the issuance of all of the Raw Water Credits available to Wingfoot under this Agreement, Wingfoot shall convey all of Wingfoot's TIC Interest to Greeley, at which point the tenancy in common shall terminate and one hundred percent (100%) ownership in and to the Property will vest in Greeley, except to the extent that Greeley has assigned or encumbered any of its interest in the Tenancy in Common or the Property.

10.3 Administration; Tracking.

A. Issuance. Greeley's Water and Sewer Department, acting on behalf of Greeley, (the "Department") shall establish and maintain a written record of all issued and outstanding Certificates (the "Registry"). The Registry shall include, but is not limited to, (i) the name of the person or entity to whom a Certificate has been issued or transferred ("Registered Owner"), (ii) the date of issuance or transfer, as applicable, (iii) the Registered Owner's contact information as of the date of the issuance or transfer, (iv) the Certificate Number affixed thereto, and (v) the number of Raw Water Credits evidenced thereby.

B. Assignment. A Certificate may be transferred in the Registry, in whole or in part, but only in whole numbers of Raw Water Credits, by the Registered Owner upon presentation of the original Certificate with the form of assignment thereon, properly executed and acknowledged. If Wingfoot is the Registered Owner and Wingfoot has not fully satisfied its Cash Contribution obligation, then Wingfoot must submit documentation and deposit or arrange for the deposit of funds as required by Section 9.1.B (Source of Funds) along with the original Certificate and the properly executed and acknowledged assignment. Certificates for fractional Raw Water Credits will not be issued or accepted by Greeley. If a Registered Owner assigns only a portion of the Raw Water Credits evidenced by a Certificate, then the Department will issue one Certificate to the assignee for the amount assigned and a second Certificate to the assignor (i.e., the original Registered Owner) for the amount retained. The Department shall not be obligated to: (i) recognize any person or entity as the owner of a Certificate, or having any interest therein, who does not appear as the Registered Owner thereof in the Registry or (ii) issue or reissue a Certificate to a Registered Owner, including Wingfoot, who has failed to comply with this Section 10.3 with respect to the Raw Water Credits evidenced or to be evidenced by such Certificate, until such failure to comply is remedied or cured.

C. Redemption; Cancellation of Credit. A Registered Owner may redeem a Raw Water Credit in satisfaction of any cash-in-lieu fee obligation associated with the Registered Owner's request for water service as prescribed by the Raw Water Dedication Policy. If a Registered Owner presents a Certificate to Greeley and redeems a Raw Water Credit in satisfaction of the Raw Water Dedication Policy or if Wingfoot surrenders a Certificate evidencing put or called Raw Water Credits pursuant to Section 11.5 (Release; Payment; Cancellation of Raw Water Credits), then the Raw Water Credits so presented or acquired shall be deemed exercised and the Certificate or Certificates evidencing the same shall be cancelled.

10.4 Audit of Registry and Sales.

A. Wingfoot's Records. Upon no less than ten (10) days' written notice to Wingfoot, Greeley may audit Wingfoot's non-Confidential records related to the sale of Raw Water Credits or transfer, disposition, or encumbrance of the Property. As used in the preceding sentence, "Confidential" means any documents or other information that Wingfoot believes in good faith would create a risk of financial or other injury if disclosed; provided, however, that proposed sale price and accounting of the Net Cash Proceeds of proposed or completed Third Party Transfers shall not be considered Confidential. Greeley agrees that it will not request an audit more than once in a calendar year, unless (a) an audit or investigation is required by any governmental or regulatory authority or (b) Greeley reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Greeley reasonably determines that Wingfoot has sold Raw Water Credits or transferred,

disposed or encumbered the Property in a manner that (x) either (i) violates this Agreement or (ii) constitutes an Event of Default by Wingfoot, and (y) individually or in the aggregate has a Material Adverse Effect on Greeley's interest in the Assets, then Greeley shall provide written notice to Wingfoot and an opportunity to cure such default in accordance with Article 14. Upon Wingfoot's failure to cure such default, Greeley may pursue any applicable or available remedy under this Agreement.

B. Greeley's Records. Upon no less than then ten (10) days written notice to Greeley, Wingfoot may audit the Registry and Greeley's policies, procedures and records that relate to the maintenance of the Registry under this Agreement to ensure accurate and complete records consistent with Section 10.3 (Administration; Tracking). Wingfoot agrees that it will not request an audit more than once in a calendar year, unless (i) an audit or investigation is required by any governmental or regulatory authority or (ii) Wingfoot reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Wingfoot reasonably determines that the tracking of the Raw Water Credits in the Registry is deficient or that Greeley is in default of this Agreement (each, a "Registry Default"), then Wingfoot shall provide written notice to Greeley and an opportunity to cure such Registry Default in accordance with Article 14. If Greeley fails to cure such default, Wingfoot may pursue any applicable or available remedy under this Agreement including, but not limited to, the remedy in Section 10.4.C (Election to Require External Registrar) below. As used in this Section 10.4, "deficient" means that the administrator failed to (i) retain accurate records of ownership or redemption of Raw Water Credits, or (ii) record any transfer or issuance of Raw Water Credits within thirty (30) days of (x) receipt of the proper form of assignment, or (y) the date of such issuance, as the case may be.

C. Election to Require External Registrar. If, after notice and opportunity to cure, Greeley fails to cure either (i) a Registry Default, or (ii) an Event of Default arising from a breach of the provisions of Section 10.3 (Administration; Tracking), in each case, within thirty (30) days of receipt of notice from Wingfoot, and the parties agree that this thirty (30) day period is the sole cure period under this Section 10.4.C and they shall disregard the application of any and all other cure periods set forth in this Agreement, then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain at Greeley's cost a financial institution experienced in maintaining similar registries to act as the registrar and administer the Registry until the earlier of December 31, 2099, or the last day upon which any Raw Water Credits remain outstanding.

10.5 Material Change to Market Value.

A. Raw Water Dedication Policy Changes.

(1) Revocation. If the City revokes or rescinds the Raw Water Dedication Policy to deny acceptance of Raw Water Credits (except as provided under Section 10.5.A. of this Agreement) prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(2) Amendments.

(a) Adding New Sources. The City may amend the Raw Water Dedication Policy to accept a New Source (defined below) in dedication and satisfaction of its raw water requirements, provided that such amendment does not occur within ten (10) years of the Closing Date. A “New Source” shall mean raw water taken in dedication from a source other than water attributable to units or shares of the following: (i) Colorado Big-Thompson Project, (ii) Greeley-Loveland Irrigation Company, (iii) Seven Lakes Reservoir Company, (iv) Loveland and Greeley Reservoir Company, (v) Greeley Irrigation Company, and/or (vi) any other water right used to historically irrigate lands within the Service Area, provided that the dedication of such water rights is limited to the satisfaction of the non-potable demand and are used to continue irrigating the historically irrigated lands. If the City amends the Raw Water Dedication Policy to accept a New Source less than ten (10) years after the Closing Date, then Wingfoot may terminate this Agreement and shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(b) Limiting Redemption of Raw Water Credits. As of the Closing Date, the Raw Water Dedication Policy shall provide that a Registered Owner may satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation under the Raw Water Dedication Policy with Raw Water Credits. The City may amend the Raw Water Dedication Policy to limit a Registered Owner’s right to satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits, provided that such amendment does not (i) occur on or before fifteen (15) years after the Closing Date, and (ii) reduce the proportion of Raw Water Credits that may be redeemed in satisfaction of a Registered Owner’s cash-in-lieu fee obligation below seventy-five percent (75%) of such obligation. If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits before fifteen (15) years after the Closing Date, then Wingfoot may terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally). If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy not less than seventy-five percent (75%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may terminate this Agreement and shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(c) Disadvantaging Raw Water Credits. Except as provided in Section 10.5.A(2)(c)(i) (Permissible Policy Change) and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy or enters into an agreement pursuant to Section 14.06.190 of the City’s Municipal Code that has the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City’s raw water dedication requirements prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and shall have the remedies provided in either Section 14.2.B(3) (Remedies,

Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(i) Permissible Policy Changes. Notwithstanding Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) above and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), the City may amend or revise the Raw Water Dedication Policy to: (i) address non-substantive administrative, clerical, or procedural changes, including but not limited to any municipal code renumbering, that do not have the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements; (ii) reflect or address a change in water use and/or consumption that is supported by economic or scientific analysis and is consistent with reasonable industry practice; or (iii) to comply with applicable federal and state law (each a "Permissible Policy Change"). The intent of a Permissible Policy Change is to narrowly tailor such change to minimize a reduction or adverse change in the value of the Raw Water Credits. Subject to the process set forth in Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy and such amendments or revisions do not qualify as a Permissible Policy Change prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then the Registered Owner (including Wingfoot in its capacity as a Registered Owner) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(ii) Objection to a Proposed Change. If the City approves an agreement pursuant to Section 14.06.190 of the Greeley Municipal Code or adopts an amendment or revision to the Raw Water Dedication Policy in a manner that is inconsistent with or otherwise violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes) prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then the Certificate shall provide a means for all Registered Owners (including Wingfoot) to object to such amendments or revisions consistent with the following process. All Registered Owners will be deemed to have notice of any agreement approved pursuant to Section 14.06.190 or any amendments or revisions to the Raw Water Dedication Policy adopted pursuant to such policy if the City follows its normal ordinance adoption, hearing and publication requirements in accordance with C.R.S. §24-6-402(2)(c), Section 3-17 of the City's Charter, and the Raw Water Dedication Policy. Registered Owners may object to the proposed final approval of such agreements or proposed final adoption of such amendments or revisions to the Raw Water Dedication Policy by providing written notice to the Department (an "Objection"), certified by a majority of the Registered Owners of the then-outstanding Raw Water Credits (through a duly-appointed "Committee Representative", the "Registered Owner Committee"), no less than five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy. In accordance with Section 3-17 and the Raw Water Dedication Policy, the date of the public hearing shall be published after the first reading and shall be set for a date no less than twenty-eight days after the first reading. The Objection shall include the Registered Owner Committee's basis for the Objection and, to the extent possible, suggested modifications that would resolve the Objection. After receipt of such Objection, the Department shall remove the ordinance approving the agreement or adopting the amendment or revision to the Raw Water Dedication Policy from the City Council's agenda.

Thereafter, the Department, and the Committee Representative shall have thirty (30) days from the date of receipt of the Objection to resolve the Objection. If the Committee Representative does not withdraw the Objection, in writing, thirty (30) days from the date of receipt of the Objection, then the Department and the Committee Representative shall submit the agreement or amendments or revisions, along with each party's respective position, to an economist or engineer, agreeable to both parties, who is a Colorado based utility rate or policy expert, to determine whether the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or the amendments or revisions qualify as a Permissible Policy Change. The economist or engineer's findings shall be binding on Greeley and the Registered Owner Committee (acting by and through the Committee Representative). If the economist or engineer finds that the agreement does not violate Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or that the amendments or revisions qualify as a Permissible Policy Change, then the Registered Owners shall not be entitled to exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the economist or engineer finds (x) either (i) that the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the amendments or revisions do not qualify as a Permissible Policy Change and (y) the City does not amend or reject the agreement or the ordinance amending or revising the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then a Registered Owner may surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to the Department and exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the Registered Owner Committee, acting by and through a Committee Representative, does not provide an Objection to the Department, five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy, then each Registered Owner shall be deemed to have consented to the agreement or to have accepted the amendments or revisions to the Raw Water Dedication Policy as a Permissible Policy Change. Nothing in this Section 10.5.A(2)(c)(ii) shall be read to limit the Registered Owner Committee or individual Registered Owners from participating in any public hearing on an ordinance approving an agreement pursuant to Section 14.06.190 or amending or revising the Raw Water Dedication Policy. In addition to the foregoing, if Wingfoot has not conveyed one hundred percent (100%) of Wingfoot's TIC Interest when the economist or engineer finds that (x) either (i) the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the amendment or revision does not qualify as a Permissible Policy Change, and (y) the City does not amend or reject the agreement or the ordinance amending the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then Wingfoot may terminate this Agreement and exercise the remedies under either Section 14.2.B(3) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(3) Reserved.

(4) Rights of Registered Owners Derived Solely from Certificate. The form of Certificate shall include the terms of Section 10.5.A(1) (Revocations) and Section 10.5.A(2) (Amendments). If, prior to the earlier of December 31, 2099 or the date the last

outstanding Raw Water Credit is redeemed, Greeley (i) revokes or rescinds the Raw Water Dedication Policy pursuant to Section 10.5.A(1) (Revocation), (ii) adds a new source in violation of Section 10.5.A(2)(a) (Adding New Sources), (iii) limits or reduces the redemption of the Raw Water Credits or otherwise is in violation of Section 10.5.A(2)(b) (Limiting Redemption of Raw Water Credits), (iv) enters into an agreement that violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits), or (v) approves an amendment or revision that does not qualify as a Permissible Policy Change pursuant to Section 10.5.A(2)(c)(ii), then, subject to Section 17.21 (Integrated Agreement), a Registered Owner's exclusive remedy shall be to have the option to surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to Greeley, and Greeley shall be obligated to buy back the surrendered Raw Water Credits at the greater of (a) thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the three-year trailing average of Greeley's cash-in-lieu price, as defined by the Raw Water Dedication Policy.

B. Cash-In-Lieu. If Greeley's calculated cash-in-lieu requirement, as provided in the Raw Water Dedication Policy, falls below thirty thousand dollars (\$30,000) per acre-foot ("Base Amount") in any year prior to the earlier of (i) December 31, 2099 or (ii) the date that Wingfoot transfers and assigns its last Raw Water Credit to a third-party as evidenced by the Registry, Greeley shall compensate Wingfoot by paying the Specified Difference to Wingfoot each year Greeley's calculated cash-in-lieu requirement falls below the Base Amount. The Specified Difference shall be an amount equal to the product of the number of Raw Water Credits (including the Released Credits) sold by Wingfoot to a third-party and the difference between the Base Amount and the cash-in-lieu requirement set for that year ("Specified Difference") which shall be considered liquidated damages pursuant to Section 14.2.C (Remedies, Generally). The Specified Difference shall be calculated one (1) year after each reduction in cash-in-lieu requirement becomes effective and shall be due and payable to Wingfoot thirty (30) days thereafter and shall only be payable to Wingfoot.

ARTICLE 11 PUT AND CALL OPTIONS

11.1 Options.

A. Call Option. Each calendar year, beginning in 2022 and expiring after calendar year 2047 ("Option Period"), Greeley may purchase (in its sole discretion), and Wingfoot shall sell, up to one hundred sixty-seven (167) Raw Water Credits at the Option Price on an annual basis ("Call Option"), if Greeley timely delivers to Wingfoot and Credit Escrow Agent (defined below) the Call Notice (defined below). To exercise its Call Option, Greeley must provide written notice to Wingfoot and Credit Escrow Agent on or before July 1st of such calendar year ("Call Notice").

B. Put Option. Each calendar year, during the Option Period, Wingfoot may sell (in its sole discretion), and Greeley shall purchase, up to one hundred sixty-seven (167) Raw Water Credits at the Option Price on an annual basis ("Put Option"), if Wingfoot timely delivers to Greeley and Credit Escrow Agent the Put Notice (defined below). To exercise its Put

Option, Wingfoot must provide written notice to Greeley and Credit Escrow Agent on or before July 15th of such calendar year (“Put Notice”).

11.2 Escrowed Credits. For the purpose of reserving sufficient Raw Water Credits to support the Put Option and the Call Option, at Closing, the Parties shall execute an escrow agreement, substantially in the form attached hereto as Exhibit R (the “Credit Escrow”), with an escrow agent (the “Credit Escrow Agent”) to manage the deposit and release of twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits (“Escrowed Credits”) during the Option Period. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Credit Escrow attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the Credit Escrow Agent.

11.3 Released Credits. To the extent that the Put Option and/or Call Option are not exercised in full in any calendar year with respect to all of the one hundred sixty seven (167) annual Escrowed Credits (such non-exercised credits being referred to as the “Released Credits”), then all Released Credits shall no longer be subject to the Put Option or the Call Option in future years. If neither the Put Option nor Call Option are exercised in any given calendar year, then on July 16 of such year, the Credit Escrow Agent shall promptly deliver a Certificate representing all such Released Credits to Wingfoot, and, prior to the date which is ten (10) years after the Closing Date, the same amount shall be added to the Semester Total under Section 10.2 (Transfer of Tenancy in Common Interest). If the Put Option and/or Call Option are exercised in part or in full in any calendar year, then Section 11.5 (Release; Payment; Cancellation of Raw Water Credits) shall also apply. Notwithstanding anything to the contrary, Wingfoot shall retain one hundred percent (100%) of the proceeds received by it from the sale of any Released Credits.

11.4 Contents of Notices; Acknowledgement. Each Call Notice and Put Notice shall contain (a) the number of Raw Water Credits to which the Call Option or Put Option is being exercised (“Exercised Credits”), (b) the Option Price, and (c) the product of the Option Price and Exercised Credits (the “Exercise Price”), with respect to such Call Option or Put Option being exercised.

11.5 Release; Payment; Cancellation of Raw Water Credits. On July 16 of each year, in the event that the Put Option and/or Call Option is properly exercised by providing a timely Put Notice or Call Notice, respectively (each, an “Exercise Event”), then (i) the Credit Escrow Agent shall release one (1) Certificate evidencing one hundred sixty-seven (167) Raw Water Credits to Greeley (the “Surrendered Certificate”) and (ii) the same amount shall be added to the Semester Total under Section 10.2. (Transfer of Tenancy in Common Interest). If an Exercise Event occurs in any calendar year as described in the preceding sentence, Wingfoot shall provide Greeley with wire transfer instructions (which may be included in the Put Notice, if applicable) on or before August 1st. On or before the fifth (5th) business day after receipt of both the wire transfer instructions and the Surrendered Certificate, Greeley shall (x) pay Wingfoot the Exercise Price under the Put Notice and/or Call Notice, as applicable, and (y) Greeley shall issue Wingfoot a Certificate for the total Released Credits, if any, not exercised as part of any Exercise Event. Notwithstanding anything to the contrary, in addition to proceeds received from sales of any Released Credits, Wingfoot may retain one hundred percent (100%) of the Exercise Price and none of the Exercise Price shall be required to be put into any escrow or otherwise withheld.

11.6 Annual Limit. The annual aggregate maximum amount of Raw Water Credits that can be sold and purchased under the Put Option and Call Option shall be one hundred sixty-seven (167). Greeley shall not be obligated to purchase, and Wingfoot shall not be obligated to sell, more than an aggregate of one hundred sixty-seven (167) Raw Water Credits in any one year under the combined Call Option and Put Option for such calendar year.

11.7 Assignment; Transfer. Wingfoot may assign all of its rights (or remaining rights) under this Article 11 to a third-party, or assign all of its rights under this Agreement pursuant to Section 17.11 (Assignment) (in either case, such third party, a “Transferee”) and the following: (i) that the total number of unreleased Escrowed Credits be added to the applicable Semester Total under Section 10.2 (Transfer of the Tenancy in Common Interest); (ii) that the Credit Escrow Agent be directed to release the Escrowed Credits pursuant to Section 11.5 (Release; Payment; Cancellation of Raw Water Credits) to Greeley, instead of Wingfoot or the Transferee, with instruction to the Registrar to authenticate and deliver a Certificate or Certificates representing the Released Credits in the name of the Transferee, (iii) that the form of assignment (and any subsequent reassignment) be approved by Greeley in its reasonable discretion and include the Transferee’s express assumption of all obligations of Wingfoot pursuant to such Credits or this Agreement and (iv) that Wingfoot covenants and agrees, for itself, its successors and assigns, to indemnify, protect, defend and hold harmless Greeley, its successors and assigns, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including without limitation reasonable attorneys’ fees) which are imposed upon or incurred by Greeley, its successors or assigns, for claims by the Transferee against Greeley for breaches by Wingfoot of the assignment (described in this Section 11.7) to the Transferee. Wingfoot agrees that the foregoing covenants and agreements shall survive any subsequent assignment. Wingfoot and any subsequent Transferee is prohibited from assigning only a portion of its rights and/or obligations under this Article 11 to a third-party, and any attempt by Wingfoot or a subsequent Transferee to do so shall be void.

ARTICLE 12 REVENUE SHARING

12.1 Revenue Sharing.

A. Use; Outside Customers Non-Municipal. From the Closing Date until the earlier of December 31, 2055, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty percent (50%) of the Net Revenue generated by Greeley from the sale or lease of the untreated, raw water attributable to the Water Rights or the State Land Board Lease to non-municipal, non-domestic customers, including but not limited to oil and gas operators and agricultural water users. For this purpose, “Net Revenue” means an amount equal to the net proceeds of such sales or leases after deduction of power costs for any pumping required to deliver such water. Wingfoot shall also receive an amount equal to fifty percent (50%) of any revenue derived from the operation of power generation facilities constructed as part of the Project Infrastructure for a period of 25 years after completion of the Project Infrastructure (“Power Revenue Interest”). In the event power generating facilities are completed as part of the Project Infrastructure prior to December 31, 2055, then on or before December 31, 2055, Greeley

and Wingfoot shall appoint an independent third-party expert, agreeable to both Greeley and Wingfoot, who is an expert in power generation and valuation, to perform a valuation of the obligation of Greeley to pay the remaining 25-year Power Revenue Interest to Wingfoot beyond December 31, 2055 in addition to any then unpaid Power Revenue Interests (the “Power Valuation”) and deliver a written report of the Power Valuation to Greeley and Wingfoot. Within thirty (30) days of receipt of such report, Greeley shall purchase the remaining, unpaid Power Revenue Interest for the amount of the Power Valuation (the “Power Transaction”). Greeley shall determine in its sole discretion whether to sell or lease the untreated, raw water attributable to the Water Rights and the State Land Board Lease, and at what rate, and whether to install power generating capabilities. This provision shall only apply to the untreated, raw water attributable to the Water Rights and the State Land Board Lease, but shall not apply to the revenue generated from the sale or lease of wholly consumable effluent associated with Greeley’s use of the water attributable to the Water Rights and/or the State Land Board Lease.

B. Outside Customers. From the Closing Date until the earlier of December 31, 2050, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty cents (\$0.50) per one-thousand (1,000) gallons of treated water attributable to the Water Rights and/or the State Land Board Lease and delivered by Greeley to municipal and domestic water users located outside of the Service Area. Greeley shall maintain and make available to Wingfoot on request, flow records and water rights accounting for any deliveries outside the Service Area.

ARTICLE 13 CONDITIONS OF CLOSING

13.1 Wingfoot’s Conditions. Wingfoot’s obligation to sell, convey and assign, as applicable, the Assets at Closing under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Wingfoot). If Wingfoot elects not to close this transaction for failure of a condition, this Agreement shall terminate.

A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley at or prior to the Closing.

B. All of the actions contemplated by this Agreement to have been performed by Greeley at or before Closing shall have been completed.

C. There being no uncured default by Greeley of any of its obligations under this Agreement resulting in a Material Adverse Effect.

D. The pre-closing conditions under Section 6.1.A (Governing Body Approval) and B (Raw Water Dedication Policy) have been satisfied.

E. The warranties and representations made by Greeley as specifically set forth in Greeley’s General Representations, attached as Exhibit K, shall be true and correct in all material respects as of the Closing Date, and the warranties and representations made by Greeley as specifically set forth in the Environmental Representations and Warranties, attached as Exhibit H, shall be true and correct in all material respects as of the Closing Date.

F. No Credit Event shall have occurred and be continuing with respect to Greeley.

13.2 Greeley's Conditions. The obligation of Greeley to acquire and assume, as applicable, the Assets at Closing under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Greeley). If Greeley elects not to close this transaction for failure of a condition, this Agreement shall terminate.

A. Delivery and execution by Wingfoot of all items and other instruments required to be delivered by Wingfoot at or prior to the Closing.

B. All of the actions contemplated by this Agreement to have been performed by Wingfoot at or prior to Closing shall have been completed.

C. There being no uncured default by Wingfoot of any of its material obligations under this Agreement resulting in a Material Adverse Effect.

D. No Credit Event shall have occurred and be continuing with respect to Wingfoot.

E. That the pre-closing condition under Section 6.1.A (Governing Body Approval) has been satisfied.

F. That the warranties and representations made by Wingfoot as specifically set forth in Wingfoot's General Representations and Warranties, attached as Exhibit J, and the Environmental Representations and Warranties, attached as Exhibit G, shall be true and correct in all material respects as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 13.3.A(3) (Failure of Condition) below.

13.3 Failure of Condition.

A. Except (i) as set forth in subparagraph B below and (ii) for failure of the condition set forth in Section 13.2.E (Greeley's Conditions) which shall be subject to Section 6.1.A (Governing Body Approval), in the event of a failure of any condition contained in Section 13.2 (Greeley's Conditions), Greeley may in its sole discretion:

(1) Terminate this Agreement by written notice to Wingfoot, in which event: (a) all funds deposited by Greeley under this Agreement as of such date shall be immediately returned to Greeley and (b) Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, out-of-pocket costs incurred by Greeley subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement, which shall include but is not limited to the Inspection Costs; or

(2) Greeley may waive such default or condition and effectuate the Closing; or

(3) If the failure of condition consists of a default by Wingfoot that can be cured by action within the reasonable control of Wingfoot, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance, monetary damages arising out of such default, or both, EXCEPT THAT GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

B. In the event of a failure of any condition contained in Section 13.1 (Wingfoot's Conditions) above, Wingfoot may in its sole discretion:

(1) Terminate this Agreement by written notice to Greeley, in which event Wingfoot shall retain the Deposit, as liquidated damages pursuant to Section 13.4 (Pre-Closing Liquidated Damages), in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement; or

(2) Wingfoot may waive such default or condition and effectuate the Closing and Wingfoot shall have the right to recover monetary damages arising out of such default,, EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

WINGFOOT HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO SPECIFIC PERFORMANCE IN THE EVENT OF A DEFAULT BY GREELEY.

13.4 Pre-Closing Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement prior to Closing and Wingfoot does not waive the default, Wingfoot's sole remedy shall be to terminate this Agreement and retain the amount of the Deposit as liquidated damages in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement. WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE DEPOSIT AND REIMBURSEMENTS IS A REASONABLE ESTIMATE OF WINGFOOT'S DAMAGES.

ARTICLE 14 POST-CLOSING DEFAULTS AND REMEDIES

14.1 Events of Default. After Closing, each of the following shall constitute an "Event of Default":

A. Failure by either Party to make any payment or deposit when due.

B. Default by either Party in the due and punctual performance of any of its covenants, conditions, agreements or other provisions contained in this Agreement on its part to be performed, if such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and

subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered.

C. Subject to the survival provisions of Section 17.9 (Survival), any of the representations or warranties made by a Party shall prove to have been materially incorrect under the circumstances when made.

D. The occurrence and continuation of a Credit Event with respect to either Party.

14.2 Remedies, Generally. Upon the occurrence and continuation of an Event of Default, the following remedies shall be available to the Parties:

A. Except as provided in Section 14.3.A (Special Provisions for Liquidated Damages) below, if an Event of Default by Wingfoot, Greeley may in its sole discretion:

(1) Waive such default or condition; or

(2) If the Event of Default by Wingfoot can be cured by action within the reasonable control of Wingfoot, then Greeley may elect to treat this Agreement as being in full force and effect and Greeley may suspend its obligation to issue, reissue, acquire or buy Raw Water Credits until the default is cured, and shall have the right to specific performance, damages, or both, EXCEPT THAT GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES; or

(3) If the Event of Default by Wingfoot consists of a failure under Section 9.1.A (Deposit Due) to deposit the Initial Contribution within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, in which event: (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a re-assignment of the State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley shall be immediately returned to Greeley, if any, and all documents deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include but not be limited to the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the rights and obligations of the Registered Owners of any Certificates remaining outstanding.

(4) If the Event of Default consists of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution) or Section 14.1.D (Credit Event) then Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot, in which event, as Liquidated Damages pursuant to Section 14.3.A (Special Provision for Liquidated Damages), Greeley may elect to require that Wingfoot convey the entirety of

Wingfoot's TIC Interest to Greeley, and, in the event of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution), Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied (as provided in Section 9.2.B (Failure to Fund the Cash Contribution)). Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the obligations, liabilities, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement: (i) Article 11 (Put and Call Options) and (ii) Wingfoot's Deposit Obligation under Section 9.1.B (Source of Funds), which shall survive until the Cash Contribution is satisfied as provided in Section 9.1.B (Source of Funds).

(5) If the Event of Default consists of a default by Greeley under Section 10.3 (Administration; Tracking), then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain a financial institution, reasonably acceptable to Greeley and experienced in maintaining similar registries, to act as the registrar and administer the Registry until December 31, 2099 or such earlier date as the last outstanding Raw Water Credit has been redeemed.

B. If the Event of Default consists of a default by Greeley under Section 14.1.B or C (Events of Default) above, Wingfoot may in its sole discretion:

(1) Waive such default or condition; or

(2) If the default by Greeley can be cured by action within the reasonable control of Greeley, then Wingfoot may elect to treat this Agreement as being in full force and effect and Wingfoot shall have the right to specific performance, damages, or both, EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

(3) If the default consists of a default by Greeley under Section 10.5.A.(1) (Revocation) or (2) (Amendments), 17.11 (Assignment), 14.1.A. or 14.1.D (Events of Default), then, as Liquidated Damages pursuant to Section 14.3.B (Special Provision for Liquidated Damages), Wingfoot may elect to terminate this Agreement by delivering written notice to Greeley, in which event, (i) Wingfoot shall have the option to sell to Greeley, and Greeley shall be obligated to purchase, all unissued Raw Water Credits including all current Escrowed Credits (i.e., all Raw Water Credits remaining to be issued to Wingfoot or deposited with the Credit Escrow Agent pursuant to the Credit Escrow as of the date of such termination) at the greater of (a) a price of thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the three-year trailing average of Greeley's cash-in-lieu price; and (ii) Wingfoot shall be entitled to all funds remaining in the Construction Escrow as of the date of default by Greeley. If Wingfoot exercises such election, then upon receipt of the full cash payment, Wingfoot shall concurrently convey its entire TIC Interest to Greeley in accordance with Section 10.2 (Transfer of the Tenancy in Common Interest) as if the unissued Raw Water Credits had been issued to Wingfoot. Upon

termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement for the time period(s) specified therein.

C. If the Event of Default consists of a default by Greeley under Section 10.5.B (Cash-in-Lieu), then, as Liquidated Damages pursuant to Section 14.3.C (Special Provisions for Liquidated Damages), Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Greeley shall be obligated to pay the Specified Difference.

D. If a cure period for an Event of Default is not otherwise expressly provided in this Agreement then, except for the giving of notices, neither party shall be deemed in default hereunder with respect to such Event of Default unless such Party fails to cure such default within thirty (30) days after written notice stating such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and subsequently is diligently pursued to the completion of such performance (a full cure), an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered. If a cure period for an Event of Default is expressly provided in this Agreement, then such express cure period will control and be given effect.

14.3 Special Provisions for Liquidated Damages. The following provisions shall apply to Events of Default by either Party which result in the following liquidated damages (each referred to as "Liquidated Damages"):

A. If Wingfoot defaults in any of its obligations under Section 9.1.A (Deposits Due) and Greeley elects to terminate this Agreement, then Greeley's sole remedy shall be the terms of Section 14.2.A.(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT GREELEY'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE TERMS OF SECTION 14.2.A.(3) (Remedies, Generally) ARE A REASONABLE ESTIMATE OF GREELEY'S DAMAGES.

B. If Greeley defaults in any of its obligations under Section 10.5.A(1) (Revocation) and (2) (Amendments) of this Agreement and Wingfoot elects to terminate this Agreement, then Wingfoot's sole remedy shall be the terms of Section 14.2.B(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THE TERMS OF SECTION 14.2.B(3) (REMEDIES, GENERALLY) ARE A REASONABLE ESTIMATE OF WINGFOOT'S DAMAGES.

C. If Greeley defaults in any of its obligations under Section 10.5.B (Cash-in-Lieu) of this Agreement, Wingfoot's sole remedy shall be to the Specified Difference as provided in Section 10.5.B. WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED DIFFERENCE IS A REASONABLE ESTIMATE OF WINGFOOT'S DAMAGES.

ARTICLE 15
CONDEMNATION

If prior to Closing all or a Material Part (defined below) of the Property are subject to a proposed taking by any public authority other than Greeley, Wingfoot shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Wingfoot within fifteen (15) days after written notice thereof. In the event Greeley elects to terminate this Agreement, the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival). If Greeley does not terminate this Agreement, or if the taking is as to a non-Material Part of the Property, Greeley shall accept title to the Property subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of Wingfoot's rights to any condemnation award and Greeley shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A "Material Part" of the Property for purposes of this Article 15 shall mean a portion that would have a Material Adverse Effect on Greeley's use of the Property to deliver water and as an aquifer supply, recharge and storage facility as determined by Greeley in its good faith judgment.

ARTICLE 16
NOTICES

Any notice statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service or certified mail (receipt requested) to each other Party at the address set forth below and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such address; (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; (iv) if a facsimile number is specified, on the date and at the time shown on the facsimile; or (v) if an e-mail address is specified, on the date and at the time shown on the sent e-mail message if sent to the e-mail address specified below:

If to Wingfoot: Wingfoot Water Resources LLC
 800 8th Ave, Ste 122
 Greeley, CO 80631
 Telephone: (720) 544-3932
 Email: cdietzler@wingfootwaterresources.com

With a copy to: Hogan Lovells US LLP
 1601 Wewatta St, Ste. 900
 Denver, CO 80202
 Telephone: (303) 899-7300

Email: scot.anderson@hoganlovells.com
ana.gutierrez@hoganlovells.com
mark.heimlich@hoganlovells.com

and a copy to: Christopher P. Dietzler
Email: cdietzler@poudrevalleycapital.com

If to Greeley: City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
Email: Sean.Chamber@greeleygov.com
Adam.Jokerst@greeleygov.com
WSAdmin@Greeleygov.com

With a copy to: City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Facsimile: (970) 350-9763
Email: Douglas.Marek@Greeleygov.com
Jerrae.Swanson@Greeleygov.com
CityAttorney@Greeleygov.com

ARTICLE 17
MISCELLANEOUS

17.1 Termination. Except as otherwise provided, this Agreement shall terminate at the later of the end of the Option Period or the expiration of the revenue sharing obligation of Greeley under Section 12.1 (Revenue Sharing). Upon termination of this Agreement, all other rights and obligations of the Parties shall be terminated under this Agreement except for the representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement in addition to those identified in Section 17.9 (Survival): (i) Section 10.5.A(2) (Amendments) and (iii) Section 10.5.B (Cash-In-Lieu), which shall terminate on the dates specified therein.

17.2 No Third Party Beneficiary; No Waiver of Governmental Immunity. This Agreement shall not create any duty of care or liability with respect to any person or entity not a Party to this Agreement, including without limitation any Registered Owner (except for Wingfoot), or waive any of the privileges or immunities Greeley or their officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

17.3 Limits on Governmental Immunity. Greeley represents that, pursuant to C.R.S. §24-10-106, its governmental immunity is limited to claims for injury that lie in tort or could lie in tort. Under existing law, Greeley is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon contractual obligations, including this Agreement, or any amendments or exhibits to this Agreement, including the payment of any amounts due thereunder, provided however that no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the privileges or immunities of Greeley or its officers, employees, successors or assigns may present pursuant to law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as amended.

17.4 Mediation. If any dispute arises under this Agreement (including as to whether any Party has breached this Agreement or whether an Event of Default has occurred), then either Party may require that the other engage in nonbinding dispute resolution processes upon delivery of a written notice (a “Dispute Notice”) setting forth the disputed matter. Upon receipt by the other party of such Dispute Notice, the Parties shall use their commercially reasonable efforts to negotiate a resolution of the dispute for a period of thirty (30) days (the “Dispute Resolution Period”) which may include mediation using a mediator chosen by the Parties. During the Dispute Resolution Period, no Party may bring a claim or commence legal action related to or in connection with the matter set forth in the Dispute Notice until the Dispute Resolution Period ends. This Section 17.4 shall not alter any date in this Agreement, unless otherwise agreed.

17.5 Time. Except as otherwise provided in this Agreement, time is of the essence as to each provision of this Agreement and the performance of each Party’s obligations hereunder.

17.6 Attorneys’ Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of this Agreement, the Prevailing Party (defined below) shall be awarded its attorneys’ fees and expenses, in addition to any other relief granted. The phrase “Prevailing Party” shall include a Party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

17.7 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

17.8 Entire Agreement. This Agreement and its Exhibits contain the entire agreement among the parties regarding the subject matter hereof and supersedes all prior agreements, whether written or oral, among the parties regarding the same. This Agreement may only be modified by mutual written agreement duly authorized and executed by the parties.

17.9 Survival. The following representations and warranties shall survive until Closing (and they shall terminate and be of no further force and effect after Closing), unless

otherwise specified below, but if the Closing does not occur, the following representations and warranties shall terminate upon termination of this Agreement:

A. All warranties of title set forth in this Agreement shall merge with any deed or assignment delivered at Closing.

B. All representations and warranties contained in the General Representations and Warranties of both parties shall survive for six months from the Closing Date, if the Closing Occurs.

C. All representations and warranties contained in the Environmental Representations and Warranties.

D. All other representations and warranties hereunder.

All covenants and agreements (including monetary obligations) shall continue until the earlier of: (i) performance of such covenants or agreements or (ii) this Agreement terminates (except for the covenants and agreements contained in Section 14.2.A(4) (Remedies, Generally), and Section 17.18 (Limited Source of Payments by Greeley) which shall survive termination).

17.10 Successors. Subject to Section 17.11 (Assignment), Section 8.2 (Conveyance of Tenancy in Common Interest) and Section 11.7 (Assignment; Transfer of Put and Call) this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the Parties, their successors and permitted assigns and the parties hereto and their respective successors and permitted assigns.

17.11 Assignment. No assignment shall relieve either of the Parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such Party. The sale, pledge, or other disposition of greater than a fifty percent (50%) ownership interest in Wingfoot (a "Change of Control") to a third party not directly or indirectly owned or controlled by HA II, LLC shall require the written consent of Greeley, which consent shall not be unreasonably conditioned, withheld or delayed. Except as otherwise provided in this Agreement, neither this Agreement, nor any right hereunder, may be assigned by either Party without the prior written consent of the other Party, and any attempt to do so will be void. Notwithstanding anything to the contrary in this Agreement, in the event that Greeley unreasonably conditions, withholds or delays approval of any request for a Change of Control, Wingfoot may elect to terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally).

17.12 Relationship of the Parties. The parties acknowledge that neither Party is an agent for the other Party, and that neither Party shall or can bind or enter into agreements for the other Party.

17.13 Governing Law and Construction. This Agreement, including any instrument or agreement required hereunder, and all matters arising out of or in connection with this Agreement (whether in contract, tort or otherwise) shall be construed in accordance with and governed by the laws of the State of Colorado without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction. The parties

hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

17.14 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

17.15 Review by Counsel. The parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

17.16 Calendar Days. In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday or legal holiday of the State of Colorado, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday of the State of Colorado.

17.17 Counterparts; Electronic Signatures. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

17.18 Limited Source of Payments by Greeley.

A. This Agreement does not constitute the debt, indebtedness or multiple fiscal year financial obligation of the City within the meaning of the constitution or laws of the State of Colorado or the home rule Charter of the City.

B. Any obligation of Greeley for the payment of money hereunder (each a "Payment Obligation") shall be solely the special and limited obligations of the Enterprise. Any Payment Obligation shall be payable solely from the net revenues of the Water System remaining in each year after payment of or provision for (1) all standard operation and maintenance expenses of the Water System and the principal of, interest on and reserve requirements of its first-lien "Parity Obligations" (as that term is defined in the Water Revenue Bond Ordinance) issued and outstanding from time to time permitted by Ordinance No. 41, 2018 (the "Water Revenue Bond Ordinance"), (2) a reserve for operation and maintenance expenses equal to twenty five percent (25%) of the previous year's operation and maintenance expenses, and (3) reserves for depreciation and other amounts with respect to the Water System specifically required by the City Charter as in effect on the Closing Date (such net revenues being referred to herein as the "Surplus Revenues"). Each Payment Obligation shall constitute a "Subordinate Obligation" (as that term is defined in the Water Revenue Bond Ordinance) of the City, acting by and through the Enterprise, provided that notwithstanding the provisions of Sections 22 and 25(c) of the Water Revenue Bond Ordinance, Greeley shall not be required in any year to apply more than seventy percent (70%) of its Surplus Revenues to the payment of all Payment Obligations.

C. In the event that Greeley fails to pay any Payment Obligations in full in the year incurred, then the unpaid portion of the Payment Obligation shall continue to be due and shall be payable as provided in this Section 17.18. Greeley shall issue to Wingfoot a subordinate promissory note (each a “Subordinate Revenue Note”), in a principal amount equal to each such unpaid portion. The parties agree and acknowledge that any such Subordinate Revenue Note constitutes a “Security” as defined at C.R.S. §11-57-203(5), and is subject to the provisions of the Supplemental Public Securities Act, C.R.S. §11-57-201 et seq. Any such Subordinate Revenue Note shall mature not more than fifteen (15) years from issuance and shall be payable solely from Surplus Revenues semiannually on the first day of February and the first day of August in each year in substantially level installments of principal and interest, with simple interest accruing on the unpaid principal amount at the rate of ten percent (10%) per annum, and shall be subject to prepayment by Greeley in whole or in part, without prepayment penalty, upon not less than thirty (30) days’ notice. Greeley shall set water rates during the term of any Subordinate Revenue Note at a level to assure repayment of the Subordinate Revenue Note within the fifteen year maturity period of the Subordinate Revenue Note.

D. Pursuant to C.R.S. §11-57-208, the Surplus Revenues are hereby pledged as security for the Payment Obligations, if any, and this pledge shall be specifically confirmed by the City Council of the City in connection with each issuance of a Subordinate Revenue Note. The creation, perfection and priority of such pledge shall be governed by such Section, this Agreement and the acts of issuance by the City Council taken in connection with the issuance of each Subordinate Revenue Note. Whether or not a Subordinate Revenue Note is issued to evidence any Payment Obligation, the Surplus Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act, and such pledge shall have priority over any and all other obligations and liabilities of Greeley, except as limited in this Section 17.18 by the Charter or by the Water Revenue Bond Ordinance. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the public entity irrespective of whether such persons have notice of such liens. Greeley agrees that it will authorize and issue all Subordinate Revenue Notes in the manner and according to the procedures provided by its Charter and the Water Revenue Bond Ordinance, including advertisement for public sale to the extent then required by the Charter.

E. Greeley hereby represents and warrants, as of the Effective Date, that there are no other currently outstanding Subordinate Obligations, as that term is used in the Water Revenue Bond Ordinance. Greeley further covenants that it shall not create, nor cause to be created, any Subordinate Obligations other than (1) Subordinate Obligations or Subordinate Revenue Notes owed or issued to Wingfoot; (2) Subordinate Obligations or Subordinate Revenue Notes issued to persons other than Wingfoot for the purpose of paying or refinancing Subordinate Revenue Notes or Subordinate Obligations held by or owed to Wingfoot; or (3) Subordinate Obligations secured on a basis expressly junior to the Subordinate Obligations or Subordinate Revenue Notes owed to or held by Wingfoot.

17.19 Interest. Any Payment Obligation owed by Greeley under this Agreement and not paid when due shall bear simple interest at the rate of ten percent (10%) per annum on the unpaid amount until paid, provided that any such amount shall be subject to prepayment at any time in whole or in part, together with the interest accrued on the amount so prepaid.

17.20 Fiscal Contingency. The City shall include in its budget and appropriation measures for each fiscal year the estimated amount of revenues available for Payment Obligations pursuant to Section 17.18 (Limited Source of Payments by Greeley) hereof.

17.21 Integrated Agreement. This Agreement, including all exhibits referenced herein, constitutes the complete, unseverable, unitary, integrated agreement between Greeley and Wingfoot concerning the subject matter hereof. The parties hereto acknowledge that they negotiated this Agreement, including all exhibits, as a single transaction and would not have entered into any portion of the Agreement without the rights and obligations conferred by the Agreement as a whole. In the event that (i) there is a conflict between the terms of this Agreement and any exhibits, or (ii) this Agreement provides additional or more specific rights or remedies than those described in the exhibits (including, for purposes of an example only, those under Article 17), the terms of this Agreement shall control; provided, however, that any such remedies shall not be cumulative.

17.22 Approval. THE OBLIGATIONS OF GREELEY ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY GREELEY CITY COUNCIL AND WATER AND SEWER BOARD PURSUANT TO SECTION 6.1.A (GOVERNING BODY APPROVAL) ABOVE.

17.23 Requirement of Good Faith and Reasonable Judgment. Unless otherwise expressly provided in this Agreement, all decisions (including, for the avoidance of doubt, any determinations, approvals, and findings) to be made by a Party shall be interpreted to require the exercise of that Party's reasonable judgment, acting in good faith, in rendering such decision.

17.24 Venue. All actions or proceedings arising out of or relating to this Agreement and any dispute shall be litigated in any court in Weld County, Colorado. Each Party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts, submits itself to the personal jurisdiction of such courts and waives any defense of *forum non conveniens* or any similar defense. Each Party hereby waives its respective right to a trial by jury for any claim or cause of action based upon or arising out of or related to this Agreement in any action, proceeding, or other litigation of any type brought by any Party against any other Party, whether with respect to contract claims, tort claims, or otherwise. Each Party agrees that any such claim or cause of action will be tried by a court trial without a jury.

17.25 Severability. In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid or unenforceable, the invalidity or unenforceability will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had not been contained in this Agreement and, in lieu of each invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the invalid or unenforceable provision as may be possible and be valid and enforceable.

17.26 Amendments and Waivers. This Agreement may not be amended except by a writing signed by all of the Parties hereto. No term or provision of this Agreement shall be deemed waived except in a writing executed by the waiving party.

17.27 No Warranty of Tax Treatment. Each party is relying solely on itself and its own tax advisors regarding the tax treatment of the transactions contemplated under this Agreement. Greeley does not give any assurance that any of the transactions contemplated by this Agreement will be treated for federal or state income tax purposes in any particular manner. Wingfoot shall be solely responsible for any tax consequences to it or to its owners, successors or assigns resulting from the execution, delivery and performance of this Agreement.

17.28 Cooperation. At the request of the other Party, each Party, on its own behalf, covenants that it shall reasonably cooperate with the other Party, at no cost to the cooperating Party, in obtaining permits or other governmental approvals which are required to implement the Project and use it as an aquifer and storage recovery facility; provided that after Closing, the parties agree that Wingfoot shall not be required to spend more than a de minimis amount of time assisting Greeley obtaining permits or other governmental approvals.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set opposite their respective signatures below.

Date: June 11, 2020

WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company

By: 
Name: Christopher P. Dietzler
Title: Chief Executive Officer

Date: _____

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE

By: _____
Name: Harold Evans
Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By: _____
City Manager

By: _____
City Attorney

AVAILABILITY OF FUNDS:

By: _____
Director of Finance

RECOMMENDED:

By: _____
Director of Water and Sewer Department

**EXHIBIT A-1 TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Legal Description of Terry Ranch

(See Attached)

Legal Description of Terry Ranch

Township 11 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

- Section 1: All.
- Section 3: All.
- Section 4: SE 1/4, EXCEPT a strip for Union Pacific Railroad Company as shown on map filed July 2, 1917, at Reception No. 255201.
- Section 5: All East of Interstate Highway No. 25 described in Book 1619 at Page 614.
- Section 8: W 1/2.
- Section 9: All, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road described in Book 233 at Page 153.
- Section 11: All.
- Section 13: All.
- Section 15: All, EXCEPT a Strip 200 Feet Wide for Union Pacific Railroad Company road described in Book 149 at Page 411.
- Section 17: All, EXCEPT that part conveyed to American Telephone and Telegraph Company described in Book 1076 at Page 441.
- Section 19: That part of said Section 19 described as follows: Beginning at the point of intersection of the East line of said Section and the North line of the County Road described in Book 999 at Page 193, said point being 30 feet North of the East quarter corner of said Section; thence Westerly along the Northerly line of said County Road to the intersection with the Easterly line of the Interstate Highway No. 25 as described in Book 1619 at Page 614; thence North easterly along the Easterly line of said Highway No. 25 to the North line of said Section; thence East to the Northeast corner of said Section; thence South to the point of beginning.
- Section 21: All
- Section 22: SW 1/4 NE 1/4; S 1/2 SE 1/4; NW 1/4 SE/4 and SW/4, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road as shown on Map filed July 2, 1917.
- Section 23: All

Township 12 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

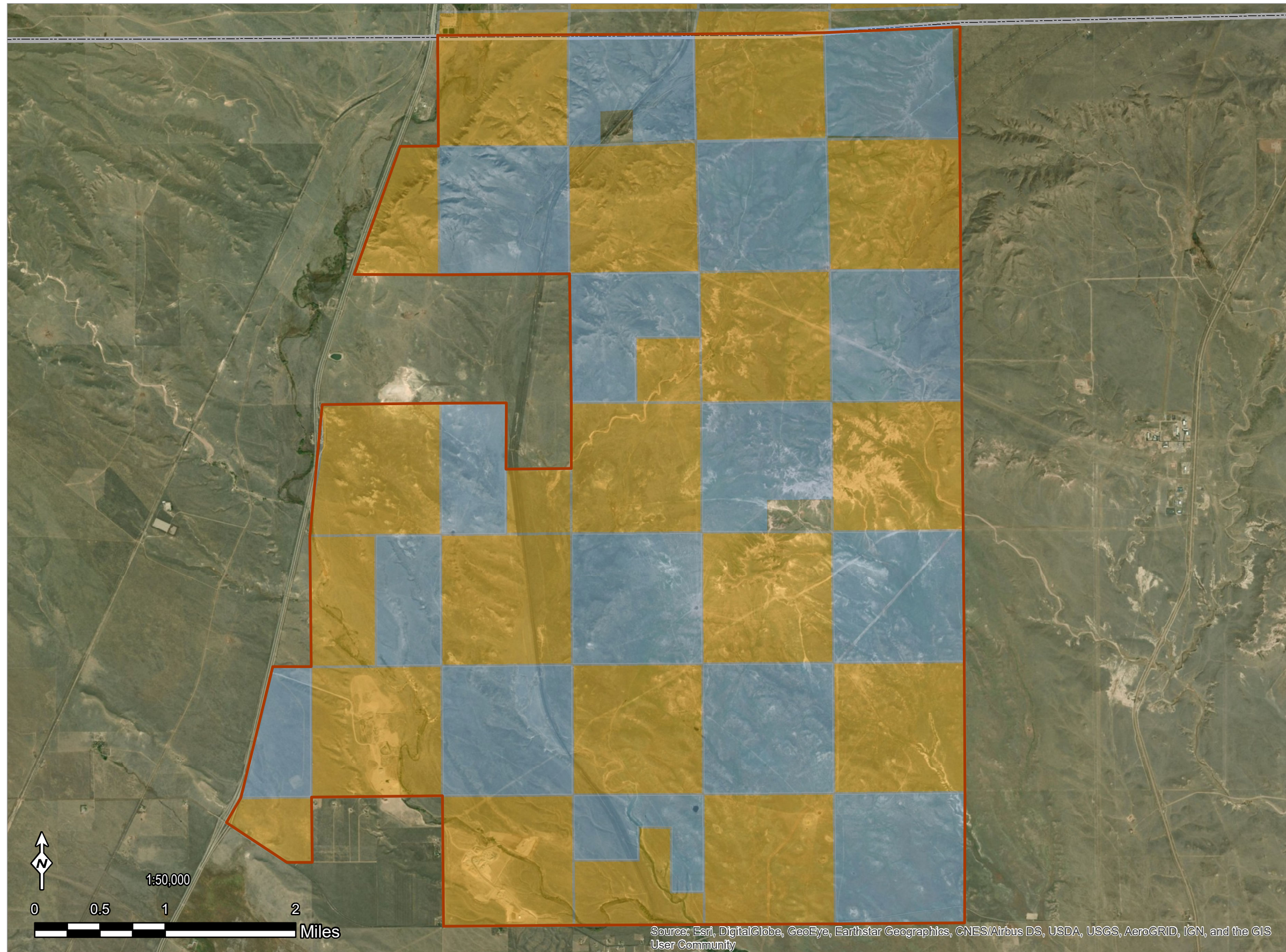
- Section 21: All in Colorado
- Section 23: All in Colorado
- Section 25: All
- Section 27: All, EXCEPT a strip 400 feet wide in N 1/2 NW 1/4 and a strip 200 feet wide in SW 1/4 NW 1/4 of said Section conveyed to Union Pacific Railroad Company described in Book 233, Page 383.
- Section 29: All East of Interstate Highway No. 25 described in Book 1619, Page 614
- Section 34: SE 1/4
- Section 35: All

All in Weld County, Colorado

**EXHIBIT A-2 TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Depiction of Terry Ranch

(See attached Map)



- Property Outline
- Terry Grazing Association
- State Land Board (within TGA)
- State Boundary

Coordinate System:
 NAD 1983 HARN StatePlane Colorado North FIPS 0501 Feet

Surface Ownership

DATE: June 2020

DRAWN: JS

CHECKED: CD

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**EXHIBIT B TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Access Easement

(See Attached)

AMENDED EASEMENT AGREEMENT

THIS AMENDED EASEMENT AGREEMENT, made and entered into the 24th day of Jan, 2020, by and between **TERRY GRAZING ASSOCIATION**, a Colorado corporation, whose address is P.O. Box 3170, Cheyenne, Wyoming 82003 (“GRANTOR”) and **WINGFOOT WATER RESOURCES LLC**, a Colorado limited liability company, whose address is 3003 E. Harmony Rd., Suite 300, Fort Collins, Colorado 80528 (“Wingfoot” or “Grantee”). Grantor and Grantee are referred to collectively as “the Parties”:

WHEREAS Grantor owns 10,662 acres situated in Weld County, Colorado as described on attached **EXHIBIT “A”** depicted on **EXHIBIT “B”** (the “Property”), which overlies ground water in the Upper Laramie aquifer (the “Nontributary Ground Water”).

WHEREAS, in Case No. 11CW275, the Division 1 Water Court, entered a Decree on Oct. 26, 2013, as amended by the Amended Decree entered on June 14, 2018, which quantified the Nontributary Ground Water rights underlying the Property.

WHEREAS, by Special Warranty Deed dated September 30, 2016, and recorded at Reception No. 4245308 by the Weld County Clerk and Recorder, GRANTOR conveyed to Total Water Resources, LLC (“TWR”) and Wingfoot undivided interests (56% and 44%, respectively) in the Upper Laramie Aquifer and Nontributary Ground Water underlying the Property.

WHEREAS, by Special Warranty Deed dated April 30, 2018 and recorded at Reception No. 4394951 by the Weld County Clerk and Recorder, TWR conveyed to Wingfoot its undivided 56% interest in the Upper Laramie aquifer and Nontributary Ground Water underlying the Property.

WHEREAS, this Amended Easement Agreement supersedes and replaces the Easement Agreement dated September 30, 2016 and recorded at Reception No. 4245309 by the Weld County Clerk and Recorder.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Parties do hereby agree as follows:

1. GRANT OF EASEMENTS

Grantor hereby conveys and grants to the Grantee, as owner of the Nontributary Ground Water and water storage capacity in the Upper Laramie aquifer underlying the Property, nonexclusive rights-of-way and easements for the purpose of installing, constructing, operating, maintaining, repairing, reconstructing, replacing, inspecting, surveying and removing, at any time and from time to time, all underground and surface appurtenances thereto necessary to withdraw the Nontributary Ground Water, and to inject into and withdraw other water from the Upper Laramie aquifer underlying the Property, and for laying pipelines, and erection of structures thereon to inject, withdraw, store, and transport the Nontributary Ground Water and other water, all subject

to the terms and conditions set forth below. Such uses of the Property by Grantee are hereinafter referred to as "Permitted Water Development Activities" or "PWDA."

Grantor hereby warrants that Grantor is the owner of the above-described Property and that the easements and rights of way are free and clear of all liens and encumbrances. Grantor agrees to defend the title to the Property herein described, and agrees that the Grantee shall have the right, at any time, to redeem by payment for Grantor any mortgages, taxes or other liens on the Property, in the event of default of payment by Grantor.

2. ACCESS

2.1. The easements and other rights of access to the Property granted to Grantee by the Grantor for PWDA shall be limited to the roads existing as of September 30, 2016 or thereafter constructed as New Roads on the Property as provided for herein. Access for operations, construction, equipment, etc., is granted solely for those activities associated with the Grantee's commercial activities within the boundaries of the Property. Operator shall confine its employees only to the areas where work necessary to its operations is being performed. Following a survey to locate a well site or other facility used for PWDA, Grantor and Grantee shall meet to determine a mutually agreeable route of ingress and egress. Meeting times and locations shall be as mutually agreed by Grantor and Grantee.

2.2. New Roads

2.2.1. Any road constructed or improved for Grantee's use shall be considered a New Road. In the event an existing road is improved for use by Grantee it shall be considered a New Road. Permanent access easements for roads, , cuts, fills, and shoulders shall not exceed thirty-five feet (35') in total width, with twenty feet (20') in width for traveled surface. Temporary construction access shall not exceed thirty-five feet (35'). Temporary construction access shall be limited to two months following commencement of road construction, subject to weather delays and emergency repairs. Grantee shall use best efforts to minimize temporary construction access area used. Grantee shall re-vegetate all areas of easements upon completion of construction outside the twenty-foot (20') wide travel area. At least 30 days prior to the construction of a new road, Grantee shall provide Grantor (a) written notice of the proposed dimensions and location of the new road, including a map depicting the locations of the proposed new road; (b) the approximate date when construction operations will start; (c) current phone number and address for the Grantee and the contractor; and (d) the estimated amount of the "ROW construction payment" as defined below. Prior to construction, Grantee, in good faith, shall consider whether reasonable requests of Grantor as to the new roads may be accommodated, with the final determination to be made in the sole discretion of Grantee. Grantee shall pay Grantor the following "ROW construction payment" as consideration for surface damage associated with the construction, maintenance and use of any new roads and any new rights-of-way necessary for access to any new location utilized in connection with Grantee's drilling, production, or other activities allowed hereunder; (1) no ROW construction payment for new roads constructed along section lines or along the existing fence lines at the right of way for the

Union Pacific Railroad and Interstate Highway 25; (2) ten dollars and No/100ths (\$10.00) per rod for new roads constructed along quarter section lines; (3) twenty dollars and No/100ths (\$20.00) per rod for new roads constructed along quarter-quarter section lines; and (4) thirty dollars and No/100ths (\$30.00) per rod for new roads not constructed along one of the aforementioned routes. Any new roads constructed along quarter or quarter-quarter section lines where there is an existing fence shall be constructed on one side or the other of the existing fence. The final amount of the ROW construction payment shall be based upon the as-built new road location and length, and shall be made to Grantor within fifteen (15) days following the date of substantial completion of the new road construction.

2.2.2. Grantee shall surface the roads constructed or improved with road base material of a quality, which provides for Grantee's intended use. Improvements to roads shall be graded to spread drainage instead of channeling runoff. Road improvements shall be constructed so as to avoid areas with high erosion potential. Erosion control, including but not limited to netting, mulching, reseeding and weed control, shall be put in place for any construction activities. Water bars shall be constructed on road grades or slopes to avoid erosion. Spacing of water breaks is dependent on slope and soil type

2.2.3. Grantee is responsible for obtaining any required permits, i.e., storm water and drainage permits, for construction of the roads from the appropriate environmental authority and state and local governments.

2.3. Use of existing roads. Grantee may use existing roads as follows:

2.3.1. Surface damage to existing roads shall be minimized. Grantee agrees to repair, at Grantee's cost, any damage caused by Grantee to existing roads used for Grantee's access.

2.3.2. Grantee shall be responsible, at its own expense, for any road improvements and culvert replacements necessary to support heavy truck traffic and for all maintenance on roads used by Grantee. Where roads cross fence lines, Grantee may install cattle guards and/or braced gates at its sole cost and expense. Such installations shall meet the reasonable approval of Grantor.

2.3.3. Once Grantee begins construction activities for building its improvements and/or Pipelines within portions of existing roads, Grantee shall be responsible to improve and maintain such portions of existing roads until final reclamation.

2.3.3.1. A designated representative of Grantee and a designated representative of Grantor shall meet as needed to assess maintenance needs to be addressed on portions of access to be improved and/or maintained by Grantee.

2.3.4. In the event that emergency maintenance is necessary, Grantor shall contact Grantee's designated representative and Grantee will make repairs as soon as reasonably possible. If road or portions of roads are impassable, Grantee shall use best efforts to effect repairs within 24 hours. If roads or portions of roads are passable, Grantee and Grantor shall agree to a mutually acceptable time for the emergency maintenance.

2.3.5. Existing Access must remain safe and passable, even while under construction.

2.4. Speed limit. The speed limit on all roads shall be 15 miles per hour. The Grantee shall post and enforce compliance with speed limits by its employees and contractors. Travel shall be limited to within the existing access corridors.

2.5. General limits on use of roads. Grantee shall confine its employees, agents, and contractors only to the areas where work necessary to the PWDA is being performed.

2.6. Road maintenance. Grantee agrees to use reasonable efforts to keep all roads free of weeds, debris, litter and trash, and if necessary, shall perform trash pickup.

2.7. Road reclamation. At least thirty (30) days prior to reclamation of any roadway, Grantee shall provide Grantor written notice of such roadway reclamation, which shall include a map of the roadway to be reclaimed. During the period prior to reclamation, Grantor may elect to retain any such roadway for ranch use by giving written notice to Grantee. Upon receipt of Grantor's election to retain such roadway, Grantee shall place the roadway, crown and borrow ditches in good and passable condition, and shall thereafter be relieved of its obligation to maintain and/or reclaim such roadway.

2.8. Setbacks from certain improvements. PWDA shall not occur closer than 200 feet to any existing or future residential, agricultural, commercial or industrial building on the Property (collectively, the "Buildings" and those Buildings, if any, constructed after the date of this Amended Easement Agreement, collectively, the "New Buildings") without the written consent of Grantor. This requirement shall not apply to, and Grantee shall have no duty to relocate any, roads, wells, Pipelines, power lines, and other appurtenances for the PWDA that existed prior to the construction of any New Buildings.

3. WELLS AND APPURTENANCES

3.1. PWDA Structures. Grantor hereby ratifies and further grants to Grantee the right, privilege and easement to locate, construct, entrench, maintain, protect, operate, inspect, repair, re-size and replace wells, pipeline(s) and other appurtenances, including but not limited to electrical service, to Grantee's wells (collectively the "Pipelines") necessary for Grantee's PWDA.

3.2. Well sites.

3.2.1. The permanent easements granted hereunder for well sites shall not exceed 0.5 acres per well. Each well site may have one or more wells into the Upper Laramie aquifer. The survey and legal description of each well site that describes the boundaries of the permanent easement for that well, shall be completed and recorded within 60 days after completion of construction of each well. All permanent well site easement shall be fenced and access will be limited via secured gates.

3.2.2. In addition to the use of the permanent well site easements as provided above, Grantor grants and conveys to Grantee temporary construction easement at each well site, which easement shall not exceed one (1.5) acres surrounding each well site. Such temporary construction easement shall be subject to all terms and conditions of this Amended Easement Agreement. Grantee shall repair or replace physical damage to natural vegetation whether within or without the boundaries of said temporary construction easements, caused by Grantee's activities on the Property. Such temporary construction easements for well sites shall continue only for such time as is necessary for Grantees to drill wells, construct necessary improvements or reconstruct or maintain facilities installed at well sites.

3.2.3. At least thirty (30) days prior to commencing any drilling operation, other than emergency repairs for the purpose of protecting public health and safety, Grantee shall provide Grantor (a) written notice of the proposed dimensions and location of the well site construction, and the approximate date when construction operations will start and (b) payment of \$7,500 for each permanent well site easement.

3.2.4. Grantor shall not take any action to impede, limit or restrict Grantee's access to or from any well site. To the extent the Grantor desires to construct or install fencing or gates over or across Grantee's access corridor(s), the plans for such fencing or gates shall be subject to the reasonable prior approval of Grantee and Grantee shall be given such keys, combinations, access codes or cards as may be necessary for Grantee to have immediate access to any well site at any time.

3.3. Pipelines.

3.3.1. Permanent easements for Pipelines shall not exceed thirty-five feet (35') in total width. Temporary construction access shall not exceed thirty-five feet (35') Temporary construction access shall be limited to six months following commencement of Pipeline construction, subject to weather delays and emergency repairs. Grantee shall use best efforts to minimize actually temporary construction access area used. Grantee shall re-vegetate all areas of easements upon completion of construction.

3.3.2. At least 30 days prior to the construction of new Pipelines, other than emergency repairs for the purpose of protecting public health and safety, Grantee shall provide Grantor: (a) written notice of the location of the proposed Pipelines, including a map depicting the

locations of the proposed Pipelines; (b) the approximate date when construction operations will start; (c) current phone number and address for the Grantee and the Pipeline contractor; and (d) the estimated amount of the ROW construction payment for the Pipelines. Prior to construction, Grantee in good faith shall consider whether reasonable requests of Grantor as to the new Pipelines may be accommodated, with the final determination to be made in the sole discretion of the Grantee. If Pipelines are constructed in rights-of-way for which Grantor has received a ROW construction payment (e.g. the new Pipelines will be constructed in a road for which Grantee previously made a ROW construction payment), then no additional ROW construction payment shall be due Grantor. For all other new Pipeline construction, the ROW construction payment shall be calculated as follows: (1) no ROW construction payment for new Pipelines constructed along section lines or along the existing fence lines at the right of way for the Union Pacific Railroad and Interstate Highway 25; (2) ten dollars and No/100ths (\$10.00) per rod for Pipelines constructed along quarter section lines; (3) twenty dollars and No/100ths (\$20.00) per rod for Pipelines constructed along quarter-quarter section lines; and (4) thirty dollars and No/100ths (\$30.00) per rod for Pipelines not constructed along one of the aforementioned aliquot routes. The ROW construction payment shall be made within fifteen (15) days following the date of commencement of construction of the new Pipelines. The final amount of the ROW construction payment shall be based upon the as-build Pipeline location and length, and shall be made to Grantor within fifteen (15) days following the date of substantial completion of the Pipeline construction.

3.4. Existing access during construction. Existing access shall not be blocked or made impassable during construction of well sites and Pipelines.

3.5. Marking and burying. Pipelines shall be clearly marked as to location and shall be covered by a minimum of 24" of soil.

3.6. Backfill. When excavating trenches wider than twelve inches for Pipeline installation or repairs, Grantee shall segregate topsoil and backfill trenches to return soils to their original positions and contour, pursuant to the requirements of the governing authority. Pipeline trenches shall be maintained by Grantee to correct subsidence and control erosion.

3.7. Erosion prevention. Pipeline construction shall avoid erodible slopes to the extent reasonably possible and in accordance with the regulations of the governing authority. Where necessary, erosion control features, such as water bars or other means of diverting flows off sloping Pipeline rights-of-way, will be constructed to control and eliminate increased runoff and erosion.

3.8. Abandonment of Wells and Pipelines. Reclamation and abandonment of Wells and Pipelines shall be in accordance with state and local requirements. Abandoned Pipelines shall be emptied, cut off below the ground surface, and capped at the ends.

4. EQUIPMENT

Grantee shall have the right at any time to remove all machinery and fixtures placed on the premises by the Grantee, including the right to withdraw and remove casing, subject to the reclamation obligations herein.

5. SAFETY & ENVIROMENTAL ISSUES

5.1. Emergency contacts. Grantee shall provide the Grantor with a list of 24 hour emergency contact numbers for responsible persons. Grantee shall ensure that all of its employees and all contractor employees verify the gates are closed behind them when entering or leaving the Property. Grantee, their agents, and outside contractors working on the Property shall maintain insurance to cover PWDA, including but not limited to surface use of the Property. The initial responsible person for Grantor shall be:

Name: Stephanie Kelly

Primary Phone: 307-631-4518

Secondary Phone: 307-635-5975

5.2. Limits on use of Property. Except in the event of an emergency, the Grantee shall not use or occupy any part of the surface of the Property for purposes other than PWDA.

5.2.1. Use of the Property by Grantee or their employees, contractors and agents, for personal or leisure activities is prohibited, including but not limited to:

5.2.1.1. Hunting and fishing are prohibited at all times. Interaction with wildlife by Grantee's employees and its contractors is prohibited.

5.2.1.2. Grantee shall ensure that firearms, pets, alcoholic beverages and illegal drugs are not brought on to the Property by its employees or employees of its contractors.

5.2.2. Grantee shall not use the Property for the long-term storage (more than 120 days) of equipment or materials related to PWDA without approval of Grantor. In the event of violation of this condition, Grantor may cause the removal of any such property and bill Grantee for the actual costs thereof plus 20%.

5.3. Fire prevention.

5.3.1. Grantee shall make every effort to use safe construction practices, and shall take precautions at all times to prevent fire, including, but not limited to (a) maintaining a fire extinguisher, shovel, ax and bucket, in each service vehicle entering upon the property and (b) utilizing spark attestors on any gas powered pumps.

5.3.2. Grantee shall be aware of the contact methods and response times of the local volunteer fire department.

5.3.3. No open fires shall be allowed.

5.3.4. Grantee shall promptly and fully compensate the Grantor for all damages caused by fire arising out of Grantee's operations, including, without limitation, any charges incurred by the Grantor for fire suppression.

5.4. Weed control. Grantee shall use its best efforts to control noxious weeds and will remove noxious weeds which are introduced or spread due to their operations on the Property.

5.5. Grantee's use of chemicals.

5.5.1. Grantee shall notify Grantor as to the type, manner and frequency of its use of insecticides, herbicides, fungicides, rodenticides, and other similar substances.

5.5.2. Oil, lubricants, or toxic substances shall not be drained onto the ground surface of the Property.

5.5.3. Grantee assumes liability for any and all environmental cleanup necessitated by leakage, spill, or introduction by any means of hazardous and toxic compounds or chemicals to the soil or water as a result of its operation or negligence and will pay all costs associated with clean up. This clause shall survive any term of this Amended Easement Agreement and Grantee's PWDA.

5.6. Existing vegetation. Vegetation removal necessitated by a construction project shall be confined to the limits of actual construction. No trees on the Property shall be removed without prior notice to Grantor.

5.7. Debris removal. All construction debris must be removed from the Property promptly.

5.8. Control measures. For each area of surface disturbance, temporary erosion control measures such as mulch, jute netting, or other appropriate methods shall be used on unstable soils, steep slopes, and wetland areas to prevent erosion and sedimentation until vegetation becomes established. Grantor and Grantee agree that Grantee's operation shall be designed and located to minimize damages, however, Grantee shall not be required to comply with any demand by Grantor that is unreasonable or cost prohibitive when compared to industry standards for a prudent water well operator.

6. RECLAMATION.

6.1. For each area of surface disturbance, Grantee shall reclaim the disturbed area once PWDA on that area have permanently ceased as follows:

6.1.1. Grantee shall use commercially reasonable efforts to reclaim disturbed areas to a condition comparable with their original condition. Such reclamation shall be promptly completed by Grantee and shall include at a minimum:

6.1.1.1. The disturbed area shall be ripped and re-contoured to conform with existing grade and no re-contoured slope shall exceed a grade of five linear feet to one foot in elevation. Topsoil shall be replaced on the disturbed area to a quality and depth which meets or exceeds its original condition.

6.1.1.2. The disturbed area shall be revegetated utilizing a seed mixture, application rate, timing and reseeding method approved by the Grantor; if vegetation comparable to the original condition of the site is not established; such reseeding shall be continued until such vegetation is established.

6.1.1.3. Foreign substances and unnecessary equipment on the Property from PWDA shall be removed from each disturbed area.

6.1.1.4. Erosion shall be adequately controlled, and if erosion occurs, it shall be terminated and remediated.

6.1.1.5. Noxious weeds shall be adequately controlled, and if such weeds appear on any disturbed area, Grantee shall promptly remove such noxious weeds from the disturbed area together with any such weeds which have spread onto other areas adjacent to the disturbed area of the Property.

6.1.2. The following are exempted from the reclamation requirement:

6.1.2.1. The driving surface and borrow ditches of roads.

6.1.2.2. Permanent well sites and temporary retention ponds while used by Grantee for PWDA.

6.1.3. If Grantee damages Grantor's personal property, Grantee shall promptly notify Grantor, or Grantor shall promptly notify Grantee of said damage, and Grantee shall pay Grantor the replacement value of personal property damaged by Grantee within ninety (90) days of said damage.

6.2. Well abandonment. Abandonment of any wells will be accomplished pursuant to the rules and regulations of the State Engineer. Within one hundred twenty (120) days following the abandonment of each well, all surface equipment and surface appurtenances, including without limitation, above ground piping (which shall be removed to a depth of four feet below ground), together with all foreign substances (including gravel) associated with such well and related Pipelines, shall be promptly removed by Grantee from the Property, and all un-reclaimed and/or un-revegetated areas previously disturbed and associated with the abandoned well, shall be reclaimed by Grantee in accordance with standards set out above.

7. ELECTRIC POWER

Grantor hereby grants to Grantee the right, privilege and easement to locate, construct, entrench, maintain, protect, operate, inspect, repair, re-size and replace electric power lines (whether overhead or underground) for the PWDA. At least 30 days prior to the construction of the power lines, Grantee shall provide Grantor: (a) written notice of the proposed location of the proposed power lines, including a map depicting the locations of the proposed power lines; (b) the approximate date when construction operations will start; (c) current phone number and address for the Grantee and the power line contractor; and (d) the estimated amount of the ROW construction payment for the power lines. Prior to construction, Grantee in good faith shall consider whether reasonable requests of Grantor as to the new power lines may be accommodated, with the final determination to be made in the sole discretion of the Grantee. If power lines are constructed in rights-of-way for which Grantor has received a ROW construction payment (e.g. the new power lines will be constructed in a road for which Grantee previously made a ROW construction payment), then no additional ROW construction payment shall be due Grantor. For all other new power line construction, the ROW construction payment shall be calculated follows: (1) no ROW construction payment for new power lines constructed along section lines or along the existing fence lines at the right of way for the Union Pacific Railroad and Interstate Highway 25; (2) ten dollars and No/100ths (\$10.00) per rod for power lines constructed along quarter section lines; (3) twenty dollars and No/100ths (\$20.00) per rod for power lines constructed along quarter-quarter section lines; and (4) thirty dollars and No/100ths (\$30.00) per rod for power lines not constructed along one of the aforementioned aliquot routes. The final amount of the ROW construction payment shall be based upon the as-build power line location and length, and shall be made to Grantor within fifteen (15) days following the date of substantial completion of the power line construction. Any such power lines constructed on the Property shall be constructed and maintained to the following specifications:

7.1. Grantee will consult with Grantor with respect to the location of power lines prior to construction.

7.2. Following construction of power lines, any disturbed area shall be reclaimed as set forth in paragraph 5.9, above.

8. GRANTEE'S USE NONEXCLUSIVE

Except for well sites, Grantee's easements for surface use pursuant to this Amended Easement Agreement shall be non-exclusive. Grantor shall have the right to use the surface of the Property in any manner which does not unreasonably interfere with the PWDA. Further, Grantor retains the exclusive right to grant rights-of-way, easements, rights to surface use to third parties other than the Grantee, which rights shall not unreasonably interfere with PWDA. Any utilities that parallel Grantee's Pipelines shall be placed to the side of the Pipeline to create a minimum horizontal space between the Pipeline and the utility of two (2) feet. To the extent that the Grantor grants rights-of-way, easements, rights to surface use to third parties that involve use of roads for which Grantee is responsible hereunder, the rights of those users shall be subject to the requirement to pay for damages caused by their use and for a reasonable portion of the operation and maintenance for said roads. The Parties shall submit any disputes regarding such third-party right-of-way, easements, or surface use to mediation pursuant to paragraph 9.6.

9. MISCELLANEOUS

9.1. Lawful operations. Grantee shall conduct its operations on the Property in accordance with all of the rules and regulations promulgated by the governing authority, as well as all other state and federal laws, rules and regulations.

9.2. Indemnification. Grantee agrees to defend, indemnify and hold Grantor harmless from any and all third party claims, demands or judgments associated with Grantee's use of the Property. To the maximum extent permitted by law, Grantee releases and waives and discharges Grantor and Grantor's officers, directors, employees, agents, successors, and assigns from any and all liabilities for personal injury, death, property damage and costs arising out of Grantee's PWDA, including, without limitation, any claims that Grantee's operations are either illegal, unauthorized or improper, and any claims by any person or state or federal agency for environmental damage or flooding or pollution resulting from Grantee's activities. Such indemnification shall extend to and include any and all claims pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.), Federal Clean Water Act of 1977 (33 U.S.C. Section 1251 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978 (7 U.S.C. Section 136 et seq.), Federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Federal Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and any similar law whether state or federal regulating the use, discharge, emission and/or cleanup of substances or wastes of the type covered by the foregoing laws.

9.3. Tax liability. Grantee shall pay all additional taxes that may be assessed against the Property by reason of any improvements placed thereon by Grantee. The Parties shall submit any disputes regarding such tax liability to mediation pursuant to paragraph 9.6.

9.4. Termination. Unless otherwise agreed by Grantor, the rights and obligations granted by Grantor to Grantee under this Amended Easement Agreement shall not terminate as long as Grantee has the right to withdraw Nontributary Ground Water or is engaged in ongoing operations to artificially recharge, store and withdraw other water in the Upper Laramie aquifer underlying the Property.

9.5. Easement Agreement subject to laws. All express and implied covenants of this Amended Easement Agreement shall be subject to all applicable federal, state, county or municipal laws, executive orders, rules and regulations. Grantee's obligations and covenants hereunder, whether express or implied, shall be suspended at the time or from time to time as compliance with such obligations and covenants is prevented or is in conflict with applicable federal, state, county or municipal laws, rules, regulations or executive orders asserted as official by or under public authority claiming jurisdiction, or act of God. This Amended Easement Agreement shall not be terminated in whole or in part, nor shall either Grantor or Grantee be held liable for damages for failure to comply with any such obligations or covenants, if compliance therewith is prevented by, or is in conflict with, any of the foregoing eventualities.

9.6. Alternative Dispute Resolution. If a dispute arises relating to this Amended Easement Agreement, and is not resolved, the Parties shall first proceed in good faith to submit the matter to mediation. The Parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Party to the other, the mediation, unless otherwise agreed, shall terminate. This section shall not alter any date in this Amended Easement Agreement, unless otherwise agreed.

9.7. Notice. Whenever notice or consent is required to be given hereunder, it shall be in writing and hand delivered to the Party entitled thereto or mailed to the Party entitled thereto, by registered or certified mail, return receipt requested, at the address of such Party set forth below. In addition, a courtesy copy shall also be sent to the receiving Party by electronic mails on the same day to the following email addresses. Any Party may, by written notice so delivered to the other Party, change the address or individual to which delivery shall thereafter be made.

If the Grantee:

Wingfoot Water Resources LLC
Attn: Christopher P. Dietzler
3003 E. Harmony Rd., Suite 300
Fort Collins, CO 80528
Email: cdietzler@poudrevalleycapital.com

If to Grantor:

Terry Grazing Association
Attn: Amy Lenhardt, President
P.O. Box 3170

Cheyenne, WY 82007
Email: amylenhardt@aol.com

9.8. **Remedies.** In the event that either Grantor or Grantee fail to comply with any right, duty or obligation hereunder, the non-defaulting Party shall so notify the defaulting Party in writing and, if the default is not corrected within thirty (30) days from the receipt of said written notice, the non-defaulting Party shall have the right to enforce the provisions of this Amended Easement Agreement in law or in equity along with any other rights and remedies, including attorneys' fees.

9.9. **Modification in writing.** All modifications and amendments to this Amended Easement Agreement of every nature and kind shall only be made in writing, signed by both Grantor and Grantee.

9.10. **Inurement; Runs With Land.** The rights and responsibilities set forth in this Amended Easement Agreement shall burden, attach to, and run with the Property and shall be binding upon Grantor's legal representatives, heirs, administrators, successors, assigns and any other persons who acquire an ownership or leasehold interest in all or part of the Property; such covenants also shall benefit, attach to, and run with the Upper Laramie Aquifer and Nontributary Ground Water underlying the Property and shall inure to the benefit of the Grantee's legal representatives, heirs, administrators, successors, assigns.

9.11. **Severability.** If any portion of this Amended Easement Agreement is held invalid or unenforceable for any reasons by a court of competent jurisdiction as to either Party or as to both Parties, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Amended Easement Agreement and the remaining portions of this Amended Easement Agreement shall be valid and enforceable.

9.12. **Counterparts.** This Amended Easement Agreement may be executed in counterparts and all such executed counterparts shall together constitute this Amended Easement Agreement. A legible electronic scan of the original in .pdf format shall be deemed an original. Copies of signatures transmitted by email shall be legal and binding for all purposes.

9.13. **Binding effect.** This Amended Easement Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and to their respective employees, contractors, subcontractors, affiliates, subsidiaries, agents, heirs, grantees, successors, legal representatives and assigns, provided however, that this Amended Easement Agreement may only be assigned to persons having the right to withdraw the Nontributary Ground Water and undertake PWDA.

9.14. **Additional documents.** The Parties agree to execute any additional documents and to take any additional action necessary to carry out this Amended Easement Agreement.

9.15. Applicable law and venue. This Amended Easement Agreement shall be construed in accordance with the laws of the State of Colorado. Venue for any dispute pursuant to this Amended Easement Agreement shall be the District Court for Weld County, Colorado.

9.16. Recording. Grantor or Grantee may file in the county records a “Memorandum of Easement Agreement” to provide third party notice of the existence of the Amended Easement Agreement.

EXECUTED this 24th day of Jan, 2020

GRANTOR:

TERRY GRAZING ASSOCIATION,

a Colorado corporation

By Amy Lenhardt, Pres.

Amy Lenhardt, President

Tax ID# 84-0541376

STATE OF COLORADO)

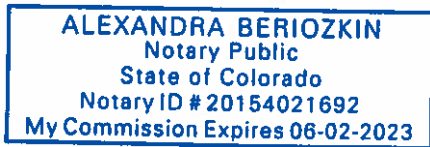
) ss.

COUNTY OF LARIMER)

The foregoing instrument was sworn and acknowledged before me this 24th day of January, 2020, by Amy Lenhardt, as President of TERRY GRAZING ASSOCIATION, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 06/02/2023



A. Beriozkin

Notary Public

GRANTEE:

WINGFOOT WATER RESOURCES LLC,

a Colorado corporation

By [Signature]

Christopher P. Dietzler,

President and CEO

STATE OF COLORADO)

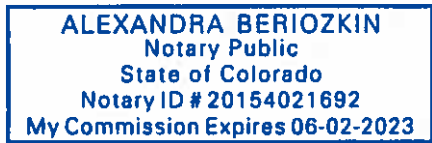
) ss.

COUNTY OF LARIMER)

The foregoing instrument was sworn and acknowledged before me this 27th day of January, 2020, by Christopher P. Dietzler, as President of and CEO of WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 06/02/2023



A. Beriozkin

Notary Public

**EXHIBIT C TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

State Land Board Lease

(See Attached)



STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS

Groundwater Production Lease No. OT-111631

- PARTIES** - THIS LEASE (the "Lease") is entered into on January 18, 2018, (the "Effective Date") by and between the State of Colorado, acting through its State Board of Land Commissioners ("the Board" or the "Lessor"), whose address is 1127 Sherman Street, Room 300, Denver, CO 80203, and Wingfoot Water Resources LLC, whose address is 3003 E. Harmony Road, Suite 300, Fort Collins, CO 80528 ("Lessee").
- CONSIDERATION** - The Parties acknowledge that the mutual promises and covenants contained in this Lease and other good and valuable consideration are sufficient and adequate to support this Lease.
- DESCRIPTION OF THE LEASED WATER** - Lessor, in consideration of the term, conditions and agreements herein and of the payments and royalties reserved herein, to be kept and performed by Lessee, its successors and assigns, does hereby lease to Lessee the exclusive right and privilege of developing tributary and nontributary ("NT") groundwater from the Upper Laramie aquifer ("Leased Water"), underlying the lands herein described ("Leased Land"), situated in the County of Weld, State of Colorado, to-wit:

<u>ACRES</u>	<u>SUBDIVISION</u>	<u>SEC-TWP-RGE</u>
498.36	Lots 1-4, S2N2, N2S2, SWSW, S2SE	22-T12N-R67W, 6 th P.M.
533.07	Lots 1-4, S2N2, S2	24-T12N-R67W
640.00	ALL	26-T12N-R67W
640.00	ALL	28-T12N-R67W
480.00	N2, SW	34-T12N-R67W
640.00	ALL	36-T12N-R67W
559.76	Lots 1-2, S2N2, N2S2, S2SW	2-T11N-R67W
322.93	Lot 2, S2NW, SW	4-T11N-R67W
320.00	E2	8-T11N-R67W
640.00	ALL	10-T11N-R67W
640.00	ALL	12-T11N-R67W
640.00	ALL	14-T11N-R67W
640.00	ALL	16-T11N-R67W
210.00	THAT PORTION E OF W BDY OF I-25	18-T11N-R67W
320.00	N2NE, SENE, NW, NESE	22-T11N-R67W
640.00	ALL	24-T11N-R67W

Development and use of the Leased Water is subject to the terms of the Lease and any well permits or water court decrees to be obtained by the Lessee.

- USE OF THE LEASED WATER** - The use of the Leased Water shall be limited to and controlled by the terms of all well permits and water court decrees to be obtained by the Lessee at the Lessee's sole expense. Lessee shall be responsible for developing and implementing any augmentation plans or substitute water supply plans required by any well permits or water court decrees at Lessee's sole expense. Lessee shall submit all plans for development of the Leased Water, including augmentation plans or substitute water supply plans, to Lessor for Lessor's approval prior to submitting to other government agencies, which approval shall not be unreasonably withheld. Lessor shall be listed as a Co-Applicant on any water court or well permit application. Lessee shall have the exclusive right to use, recapture and reuse all such Leased Water produced and to take credit for any and all return flows generated by the use of such produced groundwater during the Term of this lease. Lessee may not take any actions or fail to act in a manner which could result in the abandonment or diminution of the

historic use of the Leased Water or that violates the terms of the any well permits, water court decrees, augmentation plans, or substitute water supply plans applicable to Leased Water.

5. **LEASE TERM** - This Lease shall have a Term beginning with the effective date first written above and ending on January 18, 2028, subject to the payment of compensation and compliance with covenants and agreements contained herein.
6. **COMPENSATION**
 - A. Lessee will pay a minimum annual payment of \$100,000, payable regardless of annual water production volumes ("Water Opportunity Charge"). The Water Opportunity Charge will be credited toward the first 200 acre feet per year of water produced. If less than 200 acre feet of water is produced during the lease year, the Lessor will retain the full amount of the Water Opportunity Charge, and it shall not carry over into the next lease year.
 - B. If Lessee produces more than 200 acre feet of Leased Water per year, Lessee will pay the greater of \$200.00 per acre foot or 12.5% of the gross sales price for Leased Water produced, as measured at the wellheads. ("Volumetric Charge")
 - C. Lessee will pay \$500 per acre per year for Lease Land occupied by surface facilities on Lessor's lands.
 - D. Lessee will pay \$1,000 per mile per month for temporary above ground piping located on Lessor's lands.
 - E. Underground Piping - Lessee will pay for underground piping at the then-current ROW Pricing per the schedule published on the State Land Board website.

The Water Opportunity Charge payment is due on the Effective Date and annually thereafter on the anniversary date of the Effective Date. The Volumetric Charge shall be due and payable on or before the last day of each calendar month during the term of this Lease for Leased Water produced and sold by Lessee during the preceding calendar month.

Effective on January 18, 2023, and every five years thereafter, Lessor may increase the Volumetric Charge and Water Opportunity Charge based on the increase in the Consumer Price Index - All Urban Consumers, "CPI-U" (CUUR0000SA4), (Base Period 1982-84=100) (the "Index"), as first published by the U. S. Department of Labor, Bureau of Labor Statistics, for the preceding five year period.

7. **SURFACE ACCESS** - Lessee has the right to use as much of the surface above the Leased Water as may be reasonably required in the exercise of the right to develop and produce the Leased Water, including the right to enter upon the surface to construct wells, install water storage tanks, install and maintain pumps, conduct environmental monitoring, surveying and assessments and the right to reasonable ingress and egress; the right to construct buildings, pipelines and other improvements as may be reasonably necessary in producing the Leased Water, to the extent Lessor has the authority to grant such rights. However, this grant is subject to all existing easements and rights-of-way of third parties, the rights of surface lessees and surface patentees, the rights of existing mineral lessees, and the terms, conditions and agreements set out in this Lease. Lessee shall submit plans for use of the surface to Lessor for Lessor's approval prior to any disturbance or construction, the approval of which shall not be unreasonably withheld. If Lessee desires to use the Leased Land to transport water originating from wells on adjacent property or elsewhere in Lessee's system, Lessee must obtain from Lessor a separate right-of-way agreement, approval of which shall not be unreasonably withheld. The right of way application process shall be in compliance with Lessor's then-current Right-of-Way Policy No. 300-002 (Rev. February 2018) and then-current ROW Pricing per the schedule published on the State Land Board website.
8. **EXTENSION** - Lessor is not obligated to issue a new lease or to renew this Lease upon the expiration of the Term. However, Lessee may have a preferential right to renew this Lease or to receive a new lease, under the following conditions:

- a) Lessee shall furnish to Lessor satisfactory evidence of plans for developing beneficial uses of Leased Water during the term of the renewed lease or during the term of a new lease.
 - b) An extension of this Lease would, as determined by Lessor, be in the best interest of Lessor.
 - c) A water opportunity charge, the amount to be negotiated at the time of this extension, will be due and payable annually commencing on the effective date this Lease is extended and shall continue until the expiration of the extended term.
9. **EXTENSION BY PRODUCTION** - This Lease shall not be held in perpetuity; however, a producing well, or well capable of producing Leased Water, will perpetuate this lease beyond its Term as to the Leased Water and those Leased Lands that are located within the Section where the well is located. At the end of the Term, all Sections of land that do not contain a producing well or a well capable of producing will be eligible to be released from the lease at the option of the Lessor.
10. **CARRIAGE LOSS** - Lessee is responsible for, and shall bear, any carriage loss or charge, transit loss, ditch loss (whether by seep, evaporation, or otherwise) or similar loss of the amount of water from measurement of the water at the wellhead.
11. **MEASUREMENT DEVICES** - Lessee must install all necessary measurement devices and maintain the measurement devices in good working condition.
12. **NO RIGHTS CONVEYED** - This Lease does not convey or confer rights or ownership in the Leased Water other than as specifically stated in this Lease, nor shall any future needs of Lessee for water enable Lessee to make claim against Lessor for any water rights owned or controlled by Lessor.
13. **OFFSET DRAINAGE** - Lessee agrees to protect the Leased Water from potential drainage by wells located on adjoining lands not owned by Lessor. Lessee agrees to make every reasonable attempt to ensure that water court decrees obtained for Leased Water shall have a proportional allocation to the water rights decreed on lands adjacent to Leased Land, and any subsequent modifications or new decrees approved by water court. Development plans for Leased Water shall be coordinated by the Lessee with the development plans on adjacent lands to ensure that well locations follow all setback requirements enforced by the Colorado Division of Water Resources, unless otherwise agreed to in writing by the Lessor.
14. **PARTNERSHIP** - Nothing in this Lease shall cause the Lessor in any way to be construed as a partner, a joint venture or associated in any way with the Lessee, or subject the Lessor to any obligation, loss, charge or expense connected with or arising from the operation or use of the Leased Water or any part thereof.
15. **LIABILITY AND INDEMNITY** - The Lessee assumes all liability arising directly or indirectly from the Lessee's use or development of the Leased Water under this Lease. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction caused by or arising out of Lessee's operations, or caused by or arising out of operations conducted by any party at the direction of Lessee; with the exception of any injuries, damage, or destruction caused by the gross negligence or intentional misconduct of Lessor. Lessee agrees to defend, indemnify and hold harmless Lessor from and against liability, damage, expense, claim and judgment arising under this Lease caused by Lessee, or by any party acting at the direction of Lessee, or Lessee's designated operators, agents, employees or assigns. Lessee further agrees to indemnify Lessor for any costs, including costs of suit and fees for consultants, experts, and attorneys, incurred by Lessor in terminating or canceling, enforcing obligations or defending itself against any matter arising under this Lease. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act CRS §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended. This provision shall survive termination,

cancellation or relinquishment of this Lease and any cause of action by Lessor to enforce it shall not be deemed to accrue until Lessor's actual discovery of said liability, claim, loss, damage, or exposure.

16. **RESERVATIONS TO LESSOR** - This Lease is subject to any and all presently existing easements, rights of way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this Lease, the Board hereby reserves:
- A. All rights, privileges and uses of every kind or nature not specifically granted to Lessee by this Lease.
 - B. The right to sell, exchange, or otherwise dispose of all or any portion of the surface where Lessor is the surface owner subject to the terms and conditions of this Lease. Lessor shall provide Lessee notice upon the Lessor's decision to initiate a sale or exchange of all or a portion of the Leased Land.
 - C. The right to lease all or any portion of Lessor's land to other persons for the purposes of initiating and continuing grazing and agricultural uses, developing renewable energy, and exploring for and removing timber, minerals, ores, metals, coal, asphaltum, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary or convenient to exercise such reserved rights. Any new leases shall be compatible with and subject to the rights and privileges granted to Lessee herein.
 - D. Upon termination of this Lease, the right to sell, exchange, develop or otherwise dispose of all or any portion of the Leased Water that is subject to this Lease and the Decree.
 - E. Ownership of the Leased Water and all water, water rights, ditch rights, water stock and/or ditch stock appurtenant to or used in connection with the Leased Water including wells, rights in ditch or canal organizations or companies, except those structures constructed or completed by the Lessee. All such rights shall be and remain the property of the Lessor, except as stated herein.
 - F. The right at any time to grant a right-of-way upon, over or across all or any part of Lessor's surface for any ditch, reservoir, railroad, communication system, electric powerline, pipeline, schoolhouse or other lawful purpose. Such grants shall be subject and subordinate to the rights of Lessee granted herein, and shall provide that any and all damages caused to any structures or improvements placed upon the surface of the premises subsequent to the date hereof shall be repaired by and at the expense of the party to whom the easement or right-of-way was granted. If the grant of such rights shall unreasonably interfere with Lessee's rights hereunder, the implementation or effectiveness of the grant of such rights shall be delayed until such time as there is no interference with Lessee's rights.
 - G. The right at any time to place the Leased Land into the Stewardship Trust as set forth in Section 10(1)(b)(l) of Article IX, of the State Constitution. Said placement into the Stewardship Trust shall be for reasons not inconsistent with the rights and privileges of Lessee.
17. **ASSIGNMENTS, SUBLEASING AND ENCUMBRANCES** - This Lease shall be binding on the parties hereto, their heirs, representatives, successors and permitted assigns. This Lease shall not be assigned, transferred or sold, voluntarily or by operation of law, without the prior written consent of Lessor. Consent to an assignment shall be at the Board's sole discretion and upon such terms and conditions as determined by Lessor, including the payment of an assignment fee not to exceed \$100.00, and such consent shall not be unreasonably withheld. Any name change of the Lessee shall be considered an assignment. Assignment or other transfer without written consent of Lessor shall not affect a novation of this Lease, and shall, nevertheless, make the assignee responsible and liable, along with the Lessee, for performing this Lease. The acceptance by the Lessor of any payment due hereunder from any person other than the Lessee shall not be deemed a waiver by the Board of any provision of this Lease or to be consent to any assignment.
18. **DEFAULTS AND REMEDIES**
- A. Defaults. The occurrences of any one or more of the following events shall constitute a default hereunder by the Lessee:

- i. Failure by the Lessee to make any payment required under the Lease when due.
- ii. Use of the Leased Water by the Lessee, its successors and assigns or attempted use of the Leased Water for any other purpose than those permitted by this Lease.
- iii. Failure by the Lessee to perform any and all of the covenants, conditions or requirements contained herein.

Any of the above events of default may be cured by the Lessee within thirty (30) days after written notice thereof from the Lessor to the Lessee in accordance with Paragraph 29.q - "Notices" section of this Lease. If the nature of the Lessee's default is such that more than thirty (30) days are reasonably required to cure such default then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion. If documents provided do not cure the default or defaults specified in the written notice, the Lease shall be terminated automatically and no further notice shall be necessary.

- B. Remedies. In any event of default and in addition to any or all other rights or remedies of the Lessor hereunder or by the law provided, Lessor may exercise the following remedies at its sole option:
- i. Termination. Terminate the Lessee's right to possession of the Leased Water by any lawful means, in which case this Lease shall terminate and the Lessee shall immediately surrender possession of the Leased Water and Leased Land to Lessor according to the terms of Paragraph 19 - "Surrender" section of this Lease. In such event of termination the Lessor shall be entitled to recover from the Lessee:
 - a. The accrued but unpaid rental as of the date of such default, and other payments owed pursuant to this Lease which have accrued together with interest; and,
 - b. Any other amount necessary to compensate Lessor for the Lessee's failure to perform its obligations under this Lease or which would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Leased Water, expenses of re-leasing, reasonable damages, reasonable attorney fees, and any other reasonable costs;
 - c. Compensation for costs incurred for use of the Leased Water, including ongoing obligations under the Decree;
 - d. Interest - The interest shall be one and one half percent (1-1/2%) compounded monthly. Said interest shall accrue from the dates such amounts accrued to the Lessor until paid by the Lessee.
 - ii. Cumulative Rights. The rights and remedies reserved to Lessor, including those not specifically described, shall be cumulative, and Lessor may pursue any or all of such rights and remedies, at the same time or separately.

19. **SURRENDER** - Lessee may terminate this Lease for any reason, including if the Leased Water does not satisfy the requirements of Lessee in any way, by providing written notice to Lessor 30 days prior to termination. Such termination is the sole recourse. All prior payments will be forfeited. Upon expiration or termination of this Lease prior to January 18, 2028, the Lessee shall peaceably and quietly surrender possession of the Leased Water and any portion of Lessor's surface used by Lessee, at no cost to Lessor. Lessee shall transfer ownership of all structures to Lessor and provide written notice to Lessor of the relinquishment of any right to use the Leased Water under any water court decree that includes the Leased Water; provided, however, that at Lessee's option and expense, Lessee may remove all or a portion of such structures from the Leased Lands, and in connection therewith Lessee shall use commercially reasonable efforts to restore any disturbed land surfaces on the Leased Lands. During the Term of or upon termination or expiration of this Lease, Lessee shall have the right to negotiate a separate agreement with Lessor to continue to use structures that cross the Leased Lands, such as pipelines crossing the Leased Lands that connect to wells on private property, and shall complete The State Board of Land Commissioners right of way application process in compliance with The State Board of Land Commissioners Right-of-Way Policy No. 300-002 (Rev. February 2018) (but shall not be obligated to pay any additional right-of-way fees to the extent such fees were paid pursuant to Section 6.E above).

20. LIENS AND CLAIMS

A. Mechanics' Liens

The Lessee shall not suffer or permit to be enforced against the Leased Water or Leased Land, or any part thereof, or any improvements, any mechanics', material men's, contractors', or subcontractors' liens arising from, or any claim for damage growing out of the work of any construction, or improvement related to the Leased Water, or any other claim or demand howsoever the same may arise, but the Lessee shall pay or cause to be paid all of said liens, claims, or demands before any action is brought to enforce the same against the Leased Water or improvements.

The Lessee agrees to defend, indemnify and hold Lessor and the Leased Water free and harmless from all liability for any and all such liens, claims, demands, and actions (collectively, the "liens") together with reasonable attorneys fees and all costs and expenses in connection herewith.

B. Rights to Contest

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and Lessor against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Leased Water, upon the condition that if Lessor shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to Lessor. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying Lessor against liability for the same, and holding the Leased Water free from the effect of such lien.

21. NO REPRESENTATIONS OR WARRANTIES - Lessor makes no representations or warranties as to the Leased Water, its quantity, quality, or availability.

22. RECORDS - Lessee agrees to keep and to have in possession complete and accurate books and records regarding the Lessee's payment obligations under this Lease, including, but not limited to, contracts and agreements for the sale or exchange, or other disposition of the Leased Water, and records showing the production, water levels, sale, exchange and disposition of any and all Leased Water, including all information necessary to determine the Volumetric Charge for the Leased Water and all information and accounts required under the Decree. Lessee shall provide to Lessor an annual summary report containing such information as may be necessary to confirm the accuracy of the Volumetric Charge. Lessee shall permit Lessor, at all reasonable hours, to audit, examine, or copy such books, accounts, and records, or to furnish copies of same to Lessor within 10 days of request. Any confidential information reviewed during such audit or examination shall be kept confidential by Lessor to the extent allowed by law. Lessor will not be unreasonable with requests. All said books, accounts, and records shall be retained by Lessee and made available in Colorado to Lessor for a period of not less than 7 years.

23. DAMAGE TO LEASED LAND AND BONDS - All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid damage to the Leased Land. Prior to commencing operations on the Leased Land, Lessee shall file a good and sufficient bond with Lessor, in an amount to be fixed by Lessor prior to the issuance of the Lease, to secure the payment for damages caused by Lessee's operations on the Leased Land, and to assure compliance with all the terms and provisions of this Lease. Lessor will accept cash, a surety bond, or a bank irrevocable letter of credit. The Lessee may satisfy this individual lease bond obligation by maintaining a blanket bond with Lessor in an amount determined by Lessor. Lessor may agree to accept alternative forms of bonds. Such bond or bonds furnished prior to development of the lands contained in this Lease may be increased in such reasonable amounts as the Lessor may decide upon commencement of operations. In Lessor's discretion, the Lessor may draw upon the bond after Lessee has failed to perform its obligations under the Lease beyond the stated cure periods provided in the Lease.

When the Lessor owns the surface estate, Lessee shall be liable for all damages to the surface of the Leased Land, native grass, timber, irrigation structures, livestock, growing crops, water wells, reservoirs, or improvements caused by Lessee's operations on the Leased Land. Lessee shall give or cause to be given to Lessor prompt notice of damage to or destruction of the Leased Land or its surface, if owned by Lessor, or any part thereof, by any cause, resulting from the Lessee's use. Subject to Lessee's right to make a reasonable use of the surface of the Leased Land for its operations, and Lessee's obligation to comply with the Colorado Ground Water Commission ("Commission") rules and regulations, Lessee shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the Leased Land at least equal or substantially similar in quality to the original condition, restore it as required by the Commission's rules and regulations, and to plans approved in writing by Lessor, if required in the special stipulations of this Lease.

These obligations shall not terminate upon the assignment, termination, surrender or expiration of the Lease, but shall continue until the Leased Land is returned to at least the same or substantially similar quality as its original condition prior to any operations under this Lease on the Leased Land.

24. **SURVIVAL OF TERMS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS** - Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee shall be deemed to survive the termination, relinquishment, surrender, or abandonment of this Lease until all claims and issues have been settled or resolved. Upon termination, surrender, or abandonment of this Lease for any reason, provided Lessor does not expressly take over or assume any of Lessee's obligations hereunder, Lessor shall not be liable or responsible for compliance with the Decree, any laws, rules, regulations, orders, local ordinances or resolutions applicable to this Lease.
25. **NO WAIVER** - Failure or delay by either party to exercise any right, power or privilege hereunder will not operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one. Acceptance of payments by Lessor shall not be deemed to effect (a) a ratification, renewal, extension, or amendment of this Lease, or (b) a waiver of any rights granted to Lessor, the obligations imposed upon Lessee, express or implied, or the remedies for Lessee's breach, or (c) an estoppel against Lessor preventing Lessor from enforcing Lessor's rights or Lessee's obligations hereunder, express or implied, or from seeking damages for Lessee's breach thereof. No instrument executed by Lessor shall be effective to constitute ratification, renewal, extension or amendment of this Lease unless the instrument is clearly titled to indicate its purpose and intent.
26. **INSURANCE** - The Lessee at its sole cost and expense shall, during the entire term hereof procure, pay for and keep in full force and effect a comprehensive policy of public liability insurance covering the Leased Water and the improvements, insuring the Lessee in an amount that complies with the policy of Lessor, currently one million dollars (\$1,000,000.00), protecting Lessor and covering bodily injury, including death to persons, personal injury and property damage liability. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Water and shall name Lessor as an additional or co-insured.

The policy shall contain a provision that it cannot be cancelled or materially altered either by the insured or the insurance company until thirty (30) days prior written notice thereof is given to the Lessee and Lessor. The Lessee shall furnish a duplicate original of such policies or renewal thereof with proof of premium payment to Lessor.

No policy of insurance shall include a deductible clause in an amount greater than 1% of the face amount of the policy.

Notwithstanding anything to the contrary contained herein, the Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy(s) segregates the amount of coverage applicable to the Leased Water.

27. **NO THIRD PARTY BENEFICIARY** - Nothing in this Lease is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Lease.
28. **COMPLIANCE WITH LAW** - Lessee shall comply fully with all provisions, terms, conditions of all laws, whether local, state or federal, and orders issued thereunder, including but not limited to the rules and regulations of the Lessor, the Colorado Division of Water Resources, the Commission, any ground water management district, and any other state, local, or federal agency or commission with authority to regulate activities pursuant to this Lease. In the event that the Lessee is required to file applications, instruments, and documents with other agencies, Lessee shall notify Lessor of said filing and Lessor reserves the right to request and obtain copies of such applications, instruments, and documents from the Lessee.
29. **MISCELLANEOUS**
- a) **Waiver.** The waiver of any breach of any provision of this Lease by any party hereto shall not constitute a continuing waiver of any subsequent breach of said party, for any breach of the same or any other provision of the Lease.
- b) **Entire Understanding.** This Lease represents the complete integration of all understandings between the parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- c) **Captions.** Captions and paragraph headings in this Lease are intended for convenience and reference only and shall not define, limit or describe the scope or intent of any provisions of this Lease.
- d) **Severability.** Provided this Lease can be executed and performance of the obligations of the parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the parties can continue to perform their obligations under this Lease in accordance with its intent.
- e) **Survival.** Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Lessor if Lessee fails to perform or comply as required.
- f) **Binding Effect.** This Lease and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- g) **Modification or Amendment.**
- 1) **By the Parties.** Except as specifically provided in this Lease, modifications of this Lease shall not be effective unless agreed to in writing by the parties in an amendment to this Lease.
- 2) **By Operation of Law.** This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.
- h) **Governing Law and Venue.** This Lease and its application shall be construed in accordance with the laws of the State of Colorado. The parties agree that venue for any litigated disputes regarding this Lease shall be Denver County.

- i) **Counterparts.** This Lease may be executed in multiple identical original counterparts, all of which shall constitute one Lease.
- j) **No Third-Party Beneficiaries.** Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the parties. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.
- k) **Non-Business Days.** If the date of any action under this Lease falls on Saturday, Sunday or a day recognized as a holiday by the State of Colorado, then the relevant date shall be extended automatically until the next day that is not Saturday, Sunday or a holiday.
- l) **CORA Disclosure.** This Lease is subject to public release through the Colorado Open Records Act, CRS §24-72-201, et seq.
- m) **Costs of Suit, Attorneys Fees.** In the event that the State Land Board shall, without fault on the State Land Board's part, be made party to any litigation instituted by the Lessee or by any third party against the Lessee, or by or against any person holding under or using the Leased Water or Leased Land by license of the Lessee, or for the foreclosure of any lien for labor or material furnished to or for the Lessee or any such other person or otherwise arising out of or resulting from any action or transaction of the Lessee or of any such other person, the Lessee hereby indemnifies and holds the State Land Board harmless from and against any judgment rendered against the State Land Board or the improvements or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by the State Land Board in or in connection with such litigation.
- n) **Governmental Immunity.** No term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., as applicable now or hereafter amended.
- o) **Compliance with Laws.** The Lessee shall comply with the Decrees and all applicable federal, state and local ordinances, rules, regulations, and laws regarding the Leased Water and activities conducted in the use thereof. Furthermore, the Lessee shall not use or permit the Leased Water to be used in violation of the Decrees and any rule, regulation or law or for any purpose tending to damage or harm the Leased Water.
- p) **Lessee's Authority.** If the Lessee is an entity other than an individual, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms. Upon request, the Lessee shall deliver a certified copy of the appropriate document evidencing authorization for such execution.
- q) **Notices.** Any notice, demand, request, designation, consent, approval or other document or instrument required under the provisions of this Lease shall be in writing, shall be deemed to have been duly served on the day of receipt or rejection and shall be sent by registered or certified United States mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service that provides written evidence of delivery, as addressed to the Parties hereto. The Parties may change the place for serving such papers on it, or provide for the delivery of not more than 2 additional copies, by giving the other party at least 30 days prior written notice to such effect. Notices shall be sent to:

Lessee:
Wingfoot Water Resources LLC
3003 E. Harmony Road, Suite 300
Fort Collins, CO 80528

State Land Board:
Colorado State Board of Land Commissioners
Minerals Director
1127 Sherman Street Suite 300
Denver Colorado 80203

r) Further Assurances. From time to time following the Effective Date, Lessor and Lessee upon receipt of notice from the other party shall execute and deliver such additional documents and instruments and take such further actions as may be reasonably necessary to give effect to the terms of this Lease. Lessor agrees to reasonably cooperate with Lessee in Lessee's development of the Leased Water, within the limits of law and Lessors rights under this Lease.

IN WITNESS WHEREOF, the Lessor and Lessee by their signatures below, agree to the terms of this Lease:



LESSOR: State Board of Land Commissioners

Phillip Courtney
Phillip Courtney, Leasing Manager

LESSEE: Wingfoot Water Resources LLC

Christopher P. Dietzler

Christopher P. Dietzler, President

State of Colorado
County of Garfield

The foregoing instrument was acknowledged before me this 21st day of March, 2018, by Christopher P. Dietzler, President of Wingfoot Water Resources LLC.

Witness my hand and official seal.

Leigh Rhynalds

Notary Public

My commission expires: November 7, 2018



**EXHIBIT D TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Assignment and Assumption of State Land Board Lease

(See Attached)

After recording please return to:

City of Greeley
Attn: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Email: WSAdmin@Greeleygov.com

(This space reserved for recording information)

****SUBJECT TO STATE LAND BOARD INPUT****

**ASSIGNMENT AND ASSUMPTION OF COLORADO STATE BOARD OF LAND
COMMISSIONERS GROUNDWATER PRODUCTION LEASE**

This ASSIGNMENT AND ASSUMPTION OF COLORADO STATE BOARD OF LAND COMMISSIONERS GROUNDWATER PRODUCTION LEASE NO. OT-111631 (“Assignment”), is entered into as of _____, 20__ (the “Effective Date”) by and among WINGFOOT WATER RESOURCES LLC, a [Delaware/Colorado] limited liability company (“Assignor”) and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE, whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 (“Assignee”) (collectively referred to as the “Parties”).

RECITALS

A. WHEREAS, Assignor entered into that certain Groundwater Production Lease No. OT-111631 with the State of Colorado, acting through its State Board of Land Commissioners (“State Land Board”), dated as of January 18, 2018 (the “State Land Board Lease”), attached as Exhibit 1.

B. WHEREAS, under the State Land Board Lease, Assignor has the right to exercise the exclusive right and privilege of developing tributary and nontributary groundwater from the Upper Laramie aquifer (“Leased Water”), underlying certain lands situated in the County of Weld, State of Colorado, and managed by the State Land Board.

C. WHEREAS, under the State Land Board Lease, Assignor has the right to use the surface above the Leased Water as may be reasonably required in the exercise of the right to develop and produce the Leased Water as further described in the State Land Board Lease.

D. WHEREAS, Assignor and Assignee entered into that certain Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) dated June __, 2020 (the “Master Administration Agreement”), the objective of which is to provide the terms upon which Assignor will convey certain property and other assets to Assignee and make certain cash contributions to be used for the construction of certain infrastructure and the terms upon which

Assignee will make payment to Assignor for such conveyances, as further described in the Master Administration Agreement (the “Transaction”).

E. WHEREAS, Assignor has agreed to assign to Assignee its interest in and to the State Land Board Lease, and the State Land Board has provided prior written consent to such assignment pursuant to the State Land Board Lease.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption. Subject to Section 2 of this Assignment, Assignor hereby assigns, transfers, and conveys to Assignee all of Assignor’s right, title and interest under the State Land Board Lease. Assignee hereby accepts the foregoing assignment, agrees to be bound by all of the terms of the State Land Board Lease and assumes and agrees to pay, perform and discharge any and all liabilities and obligations to be performed by Assignor under the State Land Board Lease accruing or to be performed on or after the Effective Date.

2. [Reversion and Waiver of Consent.¹ Should either (i) the Closing of the Transaction not be consummated on or before _____, 2021, or (ii) Assignor fail to timely fund the Initial Cash Contribution pursuant to the terms of the Master Administration Agreement, then this Assignment shall be deemed *void ab initio*; or, in the alternative if not permitted under applicable law to be treated as *void ab initio*, the State Land Board Lease shall automatically revert back to Assignor (the “Lease Reversion”) on _____, 2021 without any further action by either of the parties. In the event of a Lease Reversion, Assignee shall execute any and all documents necessary to evidence that Assignor has all rights to and under the State Land Board Lease and to extinguish and remove any cloud or potential cloud on rights and interests in the State Land Board Lease, and no consent shall be required by the State Land Board to effectuate the Lease Reversion. The capitalized terms in this Section 2 shall have the meanings assigned to them in the Master Administration Agreement.]

3. Assignor’s Warranties. Assignor warrants to Assignee that, to Assignor’s knowledge, as of the Effective Date: the State Land Board Lease is valid, in full force and effect, unmodified and that Assignor is not in default of any terms and conditions of the State Land Board Lease. Assignor further warrants and represents to Assignee that Assignor has not assigned, transferred, pledged, hypothecated or transferred any interest in the State Land Board Lease.

4. No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

5. Time of the Essence. Time is of the essence in the performance by Assignor and Assignee of their obligations under this Assignment.

¹ NTD: This clause is subject to further edits based on conversations with the SLB and research regarding SLB leasing.

6. Successors and Assigns. This Assignment shall be binding upon, and shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

7. Severability. Whenever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under such law, then such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

8. Waiver. The failure of either party to exercise any right or power given hereunder, or to insist upon strict compliance by the other party, with its obligations set forth herein and/or any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver of either party's rights to demand strict compliance with the terms and conditions of this Assignment.

9. Amendments. This Assignment may not be amended except by a writing signed by the parties hereto.

10. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to the choice of law principles thereof.

11. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Assignment.

12. Recordation. This Assignment shall be recorded by Greeley in the real property records of Weld County, Colorado, as soon as practicable upon the execution of the Assignment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first set forth above.

ASSIGNOR:

WINGFOOT WATER RESOURCES LLC, a
Colorado limited liability company

By: _____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

ASSIGNEE:

THE CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation,
acting by and through its WATER
ENTERPRISE

By: _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

By: _____

City Manager

APPROVED AS TO LEGAL FORM:

By: _____

City Attorney

AVAILABILITY OF FUNDS:

By: _____

Director of Finance

RECOMMENDED:

By: _____

Director of Water and Sewer Department

[Consented to by:
State Land Board]

By: _____

Name: _____

Title: _____

EXHIBIT "1" ATTACHED TO AND MADE A PART OF
ASSIGNMENT OF STATE LAND BOARD LEASE

STATE LAND BOARD LEASE

**EXHIBIT E TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Certificate Form

(See Attached)

FORM OF RAW WATER CREDIT CERTIFICATE

THE CITY OF GREELEY, COLORADO
RAW WATER DEDICATION CREDIT CERTIFICATE NO. _____.

THIS RAW WATER DEDICATION CREDIT CERTIFICATE ("CERTIFICATE") CERTIFIES that, _____ is the "Registered Owner" of _____ "Raw Water Credits", as defined in the enclosed "Terms and Conditions." By execution and delivery of this Certificate, the City of Greeley ("City"), acting by and through its Water Enterprise ("Enterprise"), agrees to, and by acceptance of this Certificate the Registered Owner agrees to, the Terms and Conditions on the following pages.

IN WITNESS WHEREOF, this Certificate is executed and delivered by the City, acting by and through its Enterprise this ___ day of 20__.

By: _____
Director of Water and Sewer

TERMS AND CONDITIONS
(Raw Water Credits)

1. Credit Redemption; Assignment and Transfer.

A. Credit Value. One (1) Raw Water Credit represents the equivalent of, but not an interest in, one acre-foot of raw water.

B. Redemption or Transfer of Certificate. The Registered Owner of this Certificate may surrender this Certificate to the Greeley Water and Sewer Department, acting on behalf of the Enterprise (the "Department"), to either (i) redeem the Raw Water Credit(s) represented by this Certificate in whole or in part (but only in whole numbers of Raw Water Credits) towards the satisfaction of any cash-in-lieu fee obligation associated with the Registered Owner's request for water service as prescribed by the raw water dedication provisions under Chapter 14.06 of the Greeley Municipal Code ("Raw Water Dedication Policy"), attached hereto and incorporated herein as Exhibit I, which may be amended consistent with these Terms and Conditions, or (ii) transfer the Raw Water Credit(s) represented by this Certificate, in whole or in part (but only in whole numbers of Raw Water Credits), to a transferee. The Department shall not be obligated to (x) recognize any person or entity as the owner of Raw Water Credits represented by a Certificate, or having any interest therein, who does not appear as the Registered Owner thereof in the Registry (defined below) or (y) issue or reissue a Certificate to a Registered Owner who has failed to comply with these Terms and Conditions, until such failure to comply has been remedied or cured.

a. Redemption. If the Registered Owner of this Certificate surrenders this Certificate to the Department and redeems all or a portion of the Raw Water Credits represented thereby in accordance with the Raw Water Dedication Policy, then the Raw Water Credits so presented shall be deemed exercised and the Certificate evidencing the same shall be cancelled. Should the number of Raw Water Credits evidenced by this Certificate exceed the number of Raw Water Credits redeemed, the Department shall issue a new certificate to the Registered Owner for any unredeemed Raw Water Credits within thirty (30) days of surrender of this Certificate.

b. Transfer. If the Registered Owner of this Certificate transfers all or a portion of the Raw Water Credit represented by this Certificate, then the Certificate evidencing the same shall be cancelled. The form attached hereto and incorporated herein as Exhibit II, properly executed and acknowledged, shall be used for the transfer of a Raw Water Credit. Should the number of Raw Water Credits evidenced by this Certificate exceed the number of Raw Water Credits transferred, the Department shall issue a new certificate to the Registered Owner for any retained Raw Water Credits. The Department shall process all transfers made in accordance with these Terms and Conditions within thirty (30) days of surrender of this Certificate.

C. Expiry. A Registered Owner may redeem a Raw Water Credit from the Enterprise through December 31, 2099, subject to these Terms and Conditions and the Raw Water Dedication Policy.

2. Registry. The Department shall establish and maintain a written record of all issued and outstanding Certificates (the “Registry”). The Registry shall include, but is not limited to, (i) the name of the person or entity to whom a Certificate has been issued, (ii) the date of issuance or transfer, (iii) the Registered Owner’s contact information on the date of the issuance or transfer, (iv) the Certificate Number affixed thereto, and (v) the number of Raw Water Credits evidenced thereby. The Department shall have no obligation to verify the Registered Owner’s contact information; provided, however, that the Department shall update information in the Registered Owner Contacts upon the issuance or reissuance of any Certificate or if the Registered Owner provides written notice to the Department of a change to its respective Registered Owner Contacts.

3. Inspection. The Registry, including a Registered Owner’s contact information, shall be publicly available for inspection during the Department’s normal business hours and upon reasonable prior notice.

4. Termination Date. These Terms and Conditions shall be effective from the date of issuance of a Certificate to a Registered Owner, and its successors and assigns, until the earlier of (i) redemption of all Raw Water Credits held by such Registered Owner, or (ii) December 31, 2099.

5. Revocation. If the City revokes or rescinds the Raw Water Dedication Policy to deny acceptance of Raw Water Credits prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then the Registered Owner may surrender any Raw Water Credits held by such Registered Owner to the Department and exercise the Remedy defined in Section 12.

6. Adding New Sources. The City may amend the Raw Water Dedication Policy to accept a New Source (defined below) in dedication and satisfaction of its raw water requirements, provided that such amendment does not occur before [**Closing Date + 10 years**]. A “New Source” shall mean raw water taken in dedication from a source other than water attributable to units or shares of the following: (i) Colorado Big-Thompson Project, (ii) Greeley-Loveland Irrigation Company, (iii) Seven Lakes Reservoir Company, (iv) Loveland and Greeley Reservoir Company, (v) Greeley Irrigation Company, and/or (vi) any other water right used to historically irrigate lands within the service area, provided that the dedication of such water rights is limited to the satisfaction of non-potable demand and are used to continue irrigating the historically irrigated lands. If the City amends the Raw Water Dedication Policy to accept a New Source before [**Closing Date + 10 years**], then a Registered Owner may surrender Raw Water Credits held by such Registered Owner to the Department and exercise the Remedy defined in Section 12. As used in this Section 6, “service area” means and refers to that area within which the Enterprise provides water services as of [**CLOSING DATE**], inclusive of any expansions of the service area subsequent to [**CLOSING DATE**], as well as areas served by other water districts that accept Raw Water Credits in the future in accordance with the Raw Water Dedication Policy or any similar policy recognized by another water district.

7. Limiting Redemption of Raw Water Credits. A Registered Owner may satisfy up

to one hundred percent (100%) of the Registered Owner's cash-in-lieu fee obligation under the Raw Water Dedication Policy with Raw Water Credits on or before [**Closing Date + 15 years**]. The City may amend the Raw Water Dedication Policy to limit a Registered Owner's right to satisfy up to one hundred percent (100%) of the Registered Owner's cash-in-lieu fee obligation with Raw Water Credits, provided that such amendment does not (i) occur before [**Closing Date + 15 years**], and (ii) reduce the proportion of Raw Water Credits that may be redeemed in satisfaction of a Registered Owner's cash-in-lieu fee obligation below seventy-five percent (75%) of such obligation. If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner's right to satisfy one hundred percent (100%) of the Registered Owner's cash-in-lieu fee obligation with Raw Water Credits before [**Closing Date + 15 years**], then a Registered Owner may surrender Raw Water Credits held by such Registered Owner to the Department and exercise the Remedy defined in Section 12 (Remedy; Obligation of the Enterprise). If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner's right to satisfy not less than seventy-five percent (75%) of the Registered Owner's cash-in-lieu fee obligation with Raw Water Credits prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then a Registered Owner may surrender Raw Water Credits held by such Registered Owner to the Department and exercise the Remedy defined in Section 12 (Remedy; Obligation of the Enterprise).

8. Disadvantaging Raw Water Credits. Subject to the process set forth in Section 10 (Objection to a Proposed Change; Registered Owners Committee) below, if the City amends or revises the Raw Water Dedication Policy or enters into an agreement pursuant to Section 14.06.190 of the City's Municipal Code that has the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then a Registered Owner may surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to the Department and exercise the Remedy defined in Section 12 (Remedy; Obligation of the Enterprise).

9. Permissible Policy Changes. Notwithstanding Section 8 (Disadvantaging Raw Water Credits) above and subject to Section 10 (Objection to a Proposed Change; Registered Owners Committee) below, the City may amend or revise the Raw Water Dedication Policy to: (i) address non-substantive administrative, clerical, or procedural changes, including but not limited to any municipal code renumbering, that do not have the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements; (ii) reflect or address a change in water use and/or consumption that is supported by economic or scientific analysis and is consistent with reasonable industry practice; or (iii) to comply with applicable federal and state law (each a "Permissible Policy Change"). The intent of a Permissible Policy Change is to narrowly tailor such change to minimize a reduction or adverse change in the value of the Raw Water Credits. Subject to the process set forth in Section 10 (Objection to a Proposed Change; Registered Owners Committee) below, if the City amends or revises the Raw Water Dedication Policy and such amendments or revisions do not qualify as a Permissible Policy Change prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then a Registered Owner may surrender Raw Water Credits held by such Registered Owner to the Department and exercise the Remedy defined in

Section 12 (Remedy; Obligation of the Enterprise).

10. Objection to a Proposed Change; Registered Owners Committee.

A. Notice; Objection. If the City adopts an agreement pursuant to Section 14.06.190 of the Greeley Municipal Code or amends or revises the Raw Water Dedication Policy in a manner that is inconsistent with or otherwise violates Section 8 (Disadvantaging Raw Water Credits) or Section 9 (Permissible Policy Changes) prior to the earlier of December 31, 2009, or the date the last outstanding Raw Water Credit is redeemed, then the Registered Owners shall have the right to object to such agreements or amendments or revisions consistent with the following process. All Registered Owners will be deemed to have notice of any agreement approved pursuant to Section 14.06.190 or any amendments or revisions to the Raw Water Dedication Policy approved pursuant to such policy if the City follows its normal ordinance adoption, hearing and publication requirements in accordance with C.R.S. § 24-6-402(2)(c), Section 3-17 of the City's Charter, and the Raw Water Dedication Policy. Registered Owners may object to the proposed final approval of such agreements or any proposed final adoption of such amendments or revisions to the Raw Water Dedication Policy by providing written notice to the Department (an "Objection"), certified by the Committee Representative (defined below), no less than five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revisions to the Raw Water Dedication Policy. The Committee Representative shall furnish a copy of the Executed Committee Authorization (defined below) to the Department along with the Objection. In accordance with Section 3-17 and the Raw Water Dedication Policy, the date of the public hearing shall be published after the first reading and shall be set for a date no less than twenty-eight days after the first reading. The Objection shall include the Registered Owner Committee's basis for the Objection and, to the extent possible, suggested modifications that would resolve the Objection. After receipt of such Objection, the Department shall remove the ordinance approving the agreement or adopting the amendments or revisions to the Raw Water Dedication Policy from the City Council's agenda. Thereafter, the Department, and the Committee Representative shall have thirty (30) days from the date of receipt of the Objection to resolve the Objection. If the Committee Representative does not withdraw the Objection, in writing, thirty (30) days from the date of receipt of the Objection, then the Department and the Committee Representative shall submit the agreement or the amendments or revisions, along with each party's respective position, to an economist or engineer, agreeable to both parties, who is a Colorado based utility rate or policy expert, to determine whether the agreement violates Section 8 (Disadvantaging Raw Water Credits) or the amendments or revisions qualify as a Permissible Policy Change. The economist or engineer's findings shall be binding on the Enterprise, and the Registered Owner Committee (acting by and through the Committee Representative). If the economist or engineer finds that the agreement does not violate Section 8 (Disadvantaging Raw Water Credits) or that the amendments or revisions qualify as a Permissible Policy Change, then the Registered Owners shall not be entitled to exercise the Remedy defined in Section 12 (Remedy; Obligation of the Enterprise) pursuant to Section 8 (Disadvantaging Raw Water Credits) or Section 9 (Permissible Policy Changes), as the case may be. If the economist or engineer finds (x) either (i) that the agreement violates Section 8 (Disadvantaging Raw Water Credits) or (ii) that the amendments or revisions do not qualify as a Permissible Policy Change and (y) the City does not amend or reject the agreement or the ordinance amending or revising

the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then a Registered Owner may surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to the Department and exercise the Remedy defined in Section 12 (Remedy; Obligation of the Enterprise) pursuant to Section 8 (Disadvantaging Raw Water Credits) or Section 9 (Permissible Policy Changes), as the case may be. If the Registered Owner Committee, acting by and through a Committee Representative, does not provide an Objection to the Department, five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy, then each Registered Owner shall be deemed to have consented to the agreement or to have accepted the amendments or revisions to the Raw Water Dedication Policy as a Permissible Policy Change. Nothing in this Section 10 shall be read to limit the Registered Owner Committee or individual Registered Owners from participating in any public hearing on an ordinance approving an agreement pursuant to Section 14.06.190 or amending or revising the Raw Water Dedication Policy.

B. Registered Owner Committee; Committee Representative. The Registered Owners that account for a majority of the then-outstanding Raw Water Credits, as reflected in the Registry (the "Committee Threshold"), may form a "Registered Owner Committee", with full authority to act for all Registered Owners for the purposes of exercising the rights provided in Section 10.A (Notice; Objection). Any Registered Owner may submit a written request to form the Registered Owner Committee (a "Committee Authorization") to the other Registered Owners. A Committee Authorization shall include (i) a description of the Objection, which shall serve as a basis for forming the Registered Owner Committee, and (ii) the proposed representative or representatives of such Registered Owner Committee (the "Committee Representative"). The signatures (including electronic signatures) of a Committee Threshold on a Committee Authorization shall be conclusive evidence that a Registered Owner Committee has been formed ("Executed Committee Authorization"). Following delivery of the Executed Committee Authorization and Objection to the Department, the Committee Representative(s) shall have full authority to act on behalf of the Registered Owners for the purposes of resolving the Objection. The Committee Authorization shall terminate when the Objection has been resolved in accordance with Section 10.A (Notice; Objection).

11. No Duty to Other Registered Owners. These Terms and Conditions, including but not limited to Section 10 (Objection to a Proposed Change; Registered Owners Committee), shall not give rise to any duty, claim or cause of action by one Registered Owner against another. Moreover, each Registered Owner acknowledges and agrees that no Registered Owner has any obligation or responsibility to (a) monitor any amendments or revisions to the Raw Water Dedication Policy, (b) submit any Objection, even if such Objection relates to a revision or amendment that is not a Permissible Policy Change, or (c) authorize or vote in favor of the formation of the Registered Owner Committee. The rights to submit an Objection and to authorize the Registered Owner Committee are to be exercised in each Registered Owner's sole and absolute discretion.

12. Remedy; Obligation of the Enterprise. If a Registered Owner elects to surrender any Raw Water Credits held by such Registered Owner to the Department pursuant to Section 5

(Revocation), Section 6 (Adding New Sources), Section 7 (Limiting Redemption of Raw Water Credits), Section 8 (Disadvantaging Raw Water Credits), or Section 9 (Permissible Policy Changes), then the Enterprise shall be obligated to buy back the surrendered Raw Water Credits at the greater of (i) thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (ii) the three-year trailing average of the City's cash-in-lieu price ("Remedy"). A Registered Owner may surrender and the Enterprise will be obligated to buy back only a portion of the Raw Water Credits held by a Registered Owners, but only in whole numbers of Raw Water Credits. The parties agree that the amount of damages would be very difficult or impossible to calculate and the Remedy defined in this Section is intended to, and does, represent the amount of damages due to a Registered Owner (and shall constitute liquidated damages), and shall be the Registered Owner's sole and exclusive remedy, both at law and in equity, arising from or relating to those acts of the City set forth in Section 5 (Revocation), Section 6 (Adding New Sources), Section 7 (Limiting Redemption of Raw Water Credits), Section 8 (Disadvantaging Raw Water Credits), or Section 9 (Permissible Policy Changes), .

13. Amounts Due; Payable. This Certificate does not represent a debt, indebtedness or multiple fiscal year financial obligation of the City and cannot be redeemed except as expressly provided in these Terms and Conditions. Any amounts due and payable by the City to a Registered Owner pursuant to these Terms and Conditions (a "Payment Obligation") shall be solely the special and limited obligations of the Enterprise. Any Payment Obligation shall be payable solely from the net revenues of Greeley's municipal water system, operated by the Enterprise (the "Water System"), remaining in each year after payment of or provision for (a) all standard operation and maintenance expenses of the Water System and the principal of, interest on and reserve requirements of its first-lien Parity Obligations (as that term is defined in the Water Revenue Bond Ordinance) issued and outstanding from time to time as permitted by Ordinance No. 41, 2018 (the "Water Revenue Bond Ordinance"), (b) a reserve for operation and maintenance expenses equal to twenty five (25%) of the previous year's operation and maintenance expenses, and (c) reserves for depreciation and other amounts with respect to the Water System specifically required by the City Charter as in effect on [**Closing Date**] (such net revenues being referred to herein as the "Surplus Revenues"). Each Payment Obligation shall constitute a "Subordinate Obligation" (as that term is defined in the Water Revenue Bond Ordinance) of the City, acting by and through the Enterprise, provided that notwithstanding the provisions of Sections 22 and 25(c) of the Water Revenue Bond Ordinance, Greeley shall not be required in any year to apply more than seventy percent (70%) of its Surplus Revenues to the payment of all Payment Obligations.

14. No Third Party Beneficiary; No Waiver of Governmental Immunity. These Terms and Conditions shall not create any duty of care or liability with respect to any person or entity not a Registered Owner, or waive any of the privileges or immunities the City or its officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

15. Governing Law; Venue. These Terms and Conditions, including any instrument or agreement required hereunder, and all matters arising out of or in connection with these Terms and Conditions (whether in contract, tort or otherwise) shall be construed in accordance with and

governed by the laws of the State of Colorado, without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction. All actions or proceedings arising out of or relating to these Terms and Conditions and any dispute shall be litigated in any such court in Weld County, Colorado. Each party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts, submits itself to the personal jurisdiction of such courts and waives any defense of *forum non conveniens* or any similar defense. Each party hereby waives its respective right to a trial by jury for any claim or cause of action based upon or arising out of or related to this Agreement in any action, proceeding, or other litigation of any type brought by any party against any other party, whether with respect to contract claims, tort claims, or otherwise. Each party agrees that any such claim or cause of action will be tried by a court trial without a jury.

16. Amendments. These Terms and Conditions shall not be amended, modified or changed without the written agreement of the Department and Registered Owner.

EXHIBIT I

RAW WATER DEDICATION POLICY

[See attached]

EXHIBIT II

FORM TRANSFER AND ASSIGNMENT OF RAW WATER CREDITS

For \$10.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned Registered Owner hereby assigns to _____ [Name], whose mailing address is _____, [Address] (the "Transferee") _____ of the Raw Water Credit(s) evidenced by Certificate No. _____ and requests that the Registrar issue a new Certificate or Certificates evidencing ___ Raw Water Credit(s) to the Transferee and the balance of ___ Raw Water Credit(s) to the undersigned Registered Owner.

By: _____
[Registered Owner]
Name: _____
Title: _____

Representative Contact Information:

Name: _____
Company, if applicable: _____
Address: _____
Phone Number: _____
Email Address: _____

**EXHIBIT F TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Construction Escrow Agreement

(See Attached)

CONSTRUCTION ESCROW AGREEMENT

by and among

**THE CITY OF GREELEY, COLORADO,
acting by and through its
WATER ENTERPRISE,**

**WINGFOOT WATER RESOURCES, LLC,
a Delaware limited liability company**

and

_____,
a _____,¹
as Escrow Agent

Relating to

the funding and disbursements for Project Infrastructure Costs pursuant to the
Master Purchase, Sale and Raw Water Credit Administration Agreement
dated as of _____, 2020, between
Wingfoot Water Resources, LLC, a Delaware limited liability company, and
the City of Greeley, Colorado, acting by and through its Water Enterprise

Dated as of _____, 2020

¹ NTD: As discussed, title company likely be the escrow agent.

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CONSTRUCTION ESCROW AGREEMENT

THIS CONSTRUCTION ESCROW AGREEMENT (as the same may be modified, amended, supplemented, restated or replaced, this “Agreement”), made and entered into as of _____, 2020 by and among **THE CITY OF GREELEY, COLORADO, acting by and through its WATER ENTERPRISE** (together with its permitted successors and assigns, “Greeley”), **WINGFOOT WATER RESOURCES, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “Wingfoot”) and _____, a _____, as escrow agent (the “Escrow Agent”);

WITNESSETH:

WHEREAS, Greeley and Wingfoot have previously entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) dated as of _____, 2020 (as the same may be modified, amended, supplemented, restated or replaced, the “Master Agreement”) for the purpose of providing for the acquisition, financing, construction, improvement and installation of certain water rights, infrastructure improvements and appurtenant property for use by Greeley in its municipal water system; and

WHEREAS, pursuant to the Master Agreement, Greeley and Wingfoot have agreed to deposit certain funds (collectively and individually, “Cash Contributions”) in escrow for the purpose of funding Greeley’s cost of construction of infrastructure (the “Project Infrastructure”) for the purpose of withdrawing, collecting, transporting, treating and storing water withdrawn from or used for the recharge of the Upper Laramie-Fox Hills Aquifer underlying certain real property in Weld County, Colorado; and

WHEREAS, the Master Agreement contemplates that, upon the occurrence of certain events Greeley, Wingfoot, or both Greeley and Wingfoot, will deposit funds in escrow with the Escrow Agent, subject to withdrawal upon the satisfaction of certain conditions, for payment of Project Infrastructure Costs (as defined in the Master Agreement), or, upon certain other events, including the completion of the Project Infrastructure, termination of or certain defaults under the Master Agreement or termination of this Agreement, for distribution to Greeley or Wingfoot or both; and

WHEREAS, Greeley and Wingfoot desire to establish an escrow account to provide for the custody and disbursement of the Escrow Deposit (defined below) in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein set forth, and in order to secure the payment of the Project Infrastructure Costs or the return of the Escrow Deposit in whole or in part according to the tenor and effect of the Master Agreement, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. In addition to the words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Master Agreement.

“*Closing Date*” means the date of execution and delivery of this Agreement.

“*Director*” means the Director of the City of Greeley Water and Sewer Department.

“*Escrow Account*” means the interest-bearing account in which Escrow Agent holds the Escrow Deposit, which shall include the Greeley Subaccount and the Wingfoot Subaccount.

“*Escrow Deposit*” means, as of any date, the sum of the funds held by the Escrow Agent hereunder, including, in the aggregate, Cash Contributions by Greeley or Wingfoot, or both, any other funds placed in the custody of the Escrow Agent from any source on behalf of Wingfoot or Greeley and held in the Wingfoot Subaccount or the Greeley Subaccount, as applicable, and all investment earnings thereon.

“*Greeley Subaccount*” means the special subaccount created² by Escrow Agent for the purpose of accounting for funds contributed to the Escrow Account by Greeley.

“*Investment Securities*” means securities or deposits which are legal investments of public funds for Greeley under applicable State statutes and the investment policies of Greeley.

“*Project Infrastructure*” has the same meaning provided in the Master Agreement.

“*Wingfoot Subaccount*” means the special subaccount created by Escrow Agent for the purpose of accounting for funds contributed to the Escrow Account by Wingfoot.

Whenever the context may require, any pronouns used herein shall be deemed and construed to include correlative words of the masculine, feminine and neuter forms. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

² NTD: To discuss with the Escrow Agent whether an actual subaccount is possible or whether the subaccount will be noted as part of their accounting/record keeping. GREELEY RESPONSE: Greeley has a strong preference for separate subaccounts and would hope that Escrow Agent can accommodate that request. WINGFOOT RESPONSE: This is acceptable as long as the Escrow Agent is reasonably able to comply with this request.

ARTICLE II

ESTABLISHMENT OF CONSTRUCTION ESCROW ACCOUNT; DISBURSEMENTS AND FLOW OF FUNDS

Section 2.01. Creation of the Escrow Account and Deposit of Moneys.

(a) The Escrow Account shall be held by the Escrow Agent and accounted for separately from other funds of Greeley, Wingfoot, the Escrow Agent and all other persons.

(b) The Escrow Agent shall treat the deposits and withdrawals of funds by each party hereto as two separate subaccounts designated as the “Greeley Subaccount” for deposits made by Greeley, and the “Wingfoot Subaccount” for deposits made by Wingfoot. Such Subaccounts shall be maintained and accounted for separately. All interest and investment earnings on funds in (i) the Greeley Subaccount shall accrue to the benefit of Greeley, and (ii) the Wingfoot Subaccount shall accrue to the benefit of Wingfoot.

(c) Pursuant to the Master Agreement, within Ninety (90) days after the date of this Agreement, Wingfoot shall deposit Twenty-Five Million and 00/100 Dollars (\$25,000,000.00) (“Initial Contribution”) with the Escrow Agent in the Escrow Account and provide written notice thereof to Greeley. The balance of the Cash Contributions, in the amount of One Hundred Million and 00/100 Dollars (\$100,000,000.00) shall be deposited by Wingfoot into the Escrow Account in accordance with the terms and provisions of the Master Agreement.

(d) Greeley shall be entitled to a credit against its Cash Contribution requirements to the extent that it utilizes funds other than those held in the Wingfoot Subaccount by the Escrow Agent to acquire or construct any portion of the Project Infrastructure described in the Master Agreement.

(e) No less than thirty (30) days before Greeley requests withdrawal of any amount from the Wingfoot Subaccount of the Escrow Account, Greeley shall deposit in the Greeley Subaccount of the Escrow Account an amount sufficient to maintain Greeley’s aggregate, prorated share of contributions to the total Project Infrastructure Costs at the percentages shown in the table below (the “Prorated Contributions”).

Project Infrastructure Costs			Wingfoot Portion		Greeley Portion	
From	To	Total Cost	Contribution to Total Cost	Percent of Total Cost	Contribution to Total Cost	Percent of Total Cost
\$0	\$78,125,000	\$78,125,000	\$62,500,000	80.00%	\$15,625,000	20.00%
\$78,125,000	\$203,125,000	\$125,000,000	\$62,500,000	50.00%	\$62,500,000	50.00%
Total		\$203,125,000	\$125,000,000	61.54%	\$78,125,000	38.46%

Section 2.02. Disbursements for Payment of Costs of Project Infrastructure.

(a) Greeley may not draw upon the funds in the Wingfoot Subaccount of the Escrow Account for any reason during the period on or prior to ninety (90) days after the Closing Date. Any withdrawals by Greeley from the Wingfoot Subaccount of the Escrow Account after the ninety (90)-day period are subject to the following conditions: (i) Greeley must have made a Cash Contribution into the Escrow Account in accordance with Section 2.01(e) hereof, and (ii) Greeley must (a) simultaneously withdraw an amount from the Greeley Subaccount of the Escrow Account proportionate to Greeley's percent of total costs shown in the table in Section 2.01(e), and (b) use such funds from the Escrow Account solely for the Project Infrastructure Costs. After substantial completion and payment for the Project Infrastructure, the balance of the Escrow Deposit in the Escrow Account, if any, remaining in the Wingfoot Subaccount shall be released to Wingfoot and the balance of the Escrow Deposit, if any, remaining in the Greeley Subaccount shall be released to Greeley.

(b) The moneys deposited with the Escrow Agent pursuant to Section 2.01 hereof shall be applied by the Escrow Agent to pay or reimburse costs of Project Infrastructure as follows:

(i) For each disbursement (except as expressly set forth herein), Greeley shall deliver a requisition (a "Greeley Requisition") to the Escrow Agent and Wingfoot, at least five (5) business days prior to the requested disbursement, which shall consist of:

(A) a certification of the Director confirming that: (i) the funds being requested are for Project Infrastructure Costs incurred by Greeley in accordance with the Master Agreement, and (ii) the work for which funds are requested has been completed to Greeley's satisfaction;

(B) a written request signed by an authorized representative of Greeley for an amount or amounts either paid by Greeley, or due and payable, in connection with Project Infrastructure Costs, to be disbursed from the Greeley Subaccount and the Wingfoot Subaccount in proportions consistent with the "Percent of Total Cost" listed in Section 2.01(e) above, which total requested amount shall not exceed the lesser of the balance on hand in the Escrow Account or the maximum amount thereof permitted to be withdrawn from the Escrow Account in accordance with this Agreement, which request shall name the persons or person to whom payment is to be made;

(C) either written evidence of payments made or costs incurred by Greeley or the unpaid invoices for such work.

Upon receipt of each such Greeley Requisition and supporting documents the Escrow Agent shall disburse the amount or amounts requested from the Greeley Subaccount and the Wingfoot Subaccount in proportions consistent with the "Percent of Total Cost" listed in Section 2.01(e)

above by check or wire transfer to the persons named therein. Greeley shall be the only party authorized to submit requisitions for Project Infrastructure Costs from the Escrow Account.

Section 2.03. Disbursement upon Termination of this Agreement. Upon the occurrence of any of the following events, and provided that the fees and expenses of the Escrow Agent are paid, this Agreement shall terminate and the Escrow Agent shall disburse any funds remaining in its custody and not required for fees and expenses of the Escrow Agent or any pending Greeley Requisitions to Greeley and Wingfoot their respective remaining balances in the Greeley Subaccount and the Wingfoot Subaccount, respectively, within [two] ([2]) business days of: (a) receipt by the Escrow Agent of written notice from Greeley that no further requests for disbursements for Project Infrastructure Costs will be submitted; (b) receipt by the Escrow Agent of written notice from Greeley that the Project Infrastructure is completed and there are no disbursement requisitions outstanding and unpaid; (c) receipt by the Escrow Agent of written notice acknowledged by Greeley and Wingfoot that the Master Agreement has been terminated, or (d) termination of this Agreement by its terms on or before _____, 20__.

Section 2.04. Investment of Funds. The Escrow Agent shall, at all times, maintain the Escrow Deposit in an interest-bearing account, and shall have no power or duty to invest any moneys held hereunder except as provided in this Agreement, nor shall the Escrow Agent have any liability with respect to such investments, including, without limitation, any losses or taxes thereon. The Escrow Deposit shall be either held in cash or invested and reinvested from time to time in Investment Securities as directed in writing by Greeley.

ARTICLE III

CONCERNING THE ESCROW AGENT

Section 3.01. Duties of Escrow Agent. The Escrow Agent shall have no duties or responsibilities whatsoever except such duties and responsibilities as are expressly set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against the Escrow Agent.

Section 3.02. Status Report.

(a) Not less than fifteen (15) days after the close of each month, commencing with the first full month following the Initial Contribution, the Escrow Agent shall submit to the Director and Wingfoot a report covering all money which the Escrow Agent shall have received and all payments which it shall have made or caused to be made hereunder.

Section 3.03. Liability of the Escrow Agent.

(a) The Escrow Agent shall have no lien, security interest or right of setoff whatsoever upon any of the moneys or investments in the Escrow Account for the payment of fees or expenses for services rendered by the Escrow Agent under this Agreement.

(b) The Escrow Agent shall not be liable for any loss or damage in tort, contract or otherwise, including counsel fees and expenses, resulting from or in

connection with the execution and delivery of this Agreement, the establishment of the Escrow Account or any payment, transfer or other application of moneys by the Escrow Agent in accordance with the provisions of this Agreement, or by reason of any other action, omission or error hereunder, except for any loss or damage arising out of its own negligence or misconduct. Without limiting the generality of the foregoing, the Escrow Agent shall not be liable for any action taken or omitted in reliance on any notice, direction, consent, certificate, affidavit, statement, designation or other paper or document reasonably believed by it to be genuine and to have been duly and properly signed or presented to it by the Director or his or her designee, with respect to Greeley, and [_____] or his or her designee, with respect to Wingfoot.

Section 3.04. Fees, Expenses and Indemnification.

(a) Greeley and Wingfoot shall be responsible for and shall pay to the Escrow Agent, in equal shares, for its performance hereunder: (i) such compensation as may mutually be agreed upon in writing; and (ii) the Escrow Agent's reasonable out-of-pocket expenses (including reasonable third-party counsel fees and expenses) incurred in connection with this Agreement, to the extent agreed upon in writing (collectively, the "Escrow Agent Fees").

(b) Wingfoot, on the one hand, and, to the extent permitted by law, Greeley, on the other hand, severally (on a 50%/50% basis) and not jointly, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all claims, demands, expenses (including reasonable counsel fees and expenses) and liabilities of any and every nature (the "Indemnified Costs") which the Escrow Agent may sustain or incur or which may be asserted against the Escrow Agent as a result of any action taken or omitted by the Escrow Agent as provided hereunder, except to the extent any such Indemnified Costs arise out of the Escrow Agent's bad faith, negligence or willful misconduct. At any time, the Escrow Agent may apply to Greeley or Wingfoot, as applicable for written instructions with respect to any matter arising under this Agreement and shall be fully protected in acting in accordance with such instructions, provided that such action are not contrary to the express terms of this Agreement. If the Escrow Agent receives conflicting instructions it shall not be obligated to act. In addition, the Escrow Agent may, as reasonably necessary, consult its own counsel and shall be fully protected with respect to any action taken or omitted in good faith in accordance with such advice or opinion of counsel. Notwithstanding anything to the contrary in this Agreement, to the extent any Indemnified Costs arise out of Wingfoot's or Greeley's bad faith, negligence or willful misconduct, such party shall be solely responsible for indemnifying the Escrow Agent for such Indemnified Costs.

Section 3.05. Permitted Acts. Nothing herein shall prevent the Escrow Agent from engaging in business dealings with either Greeley or Wingfoot, either as customers or borrowers or in any other capacity or in any other matter provided that it is unrelated to the subject matter of this Agreement.

Section 3.06. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision

hereunder or concerning any other matter relating to this Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, after sending written notice of the same to Wingfoot and Greeley, retain the Escrow Deposit until Escrow Agent (a) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Deposit, (b) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Deposit, in which event the Escrow Agent will be authorized to make such disbursement in accordance with such final court order, arbitration decision, or agreement, or (c) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent will be relieved of all liability as to the Escrow Deposit and will be entitled to recover reasonable and documented out-of-pocket attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent will be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry or consent.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Amendments to this Agreement. This Agreement is made for the benefit of Greeley and Wingfoot and it shall not be repealed, revoked, altered or amended without the prior written consent of both such parties and the Escrow Agent, except for the termination of this Agreement in accordance with Section [4.04] hereof.

Section 4.02. Severability. If any one or more of the provisions in this Agreement shall be determined by a court of competent jurisdiction to be contrary to law, each such provision shall be deemed and construed to be severable from the remaining provisions hereof and its invalidity shall not affect the validity of the remaining provisions of this Agreement.

Section 4.03. Agreement Binding. All the covenants, promises and agreements in this agreement contained by or on behalf of Greeley, Wingfoot or the Escrow Agent shall bind and inure to the benefit of their respective permitted successors and assigns, whether or not so expressed.

Section 4.04. Termination, Resignation and Removal of the Escrow Agent.

(a) This Agreement shall terminate on the earliest of (i) _____, 20__, (ii) when all transfers and payments required to be made by the Escrow Agent under the provisions of Sections [2.02, 2.03 and/or 2.04, as applicable,] hereof shall have been made, or (iii) [termination of the Master Agreement.] The provisions of Sections 3.03 and 3.04 shall survive the termination of this Agreement.

(b) The Escrow Agent may evidence its intent to resign by giving written notice to Greeley and Wingfoot. Such resignation shall take effect only upon delivery of the Escrow Deposit to the successor Escrow Agent agreed upon in writing by Greeley and Wingfoot, and the Escrow Agent shall thereupon be discharged from all obligations under this Agreement and shall have no further duties or responsibilities in connection herewith. The Escrow Agent shall deliver the Escrow Deposit without unreasonable

delay, and no later than [two] ([2]) business days, after receiving the designation of the successor Escrow Agent and upon payment of all of its fees and expenses due and owing as of such date.

(c) Greeley and Wingfoot may evidence their intent to remove the Escrow Agent with or without cause by giving joint written notice to the Escrow Agent and Wingfoot. Such removal shall take effect only upon delivery of the Escrow Deposit to the successor Escrow Agent designated in writing by Greeley and Wingfoot, and the Escrow Agent shall thereupon be discharged from all obligations under this Agreement and shall have no further duties or responsibilities in connection herewith. The Escrow Agent shall deliver the Escrow Deposit without unreasonable delay, and no later than [two] ([2]) business days, after receiving the designation of the successor Escrow Agent in accordance with this Agreement and upon payment of all of its fees and expenses due and owing as of such date.

(d) If after thirty (30) days from the date of delivery of its written notice of intent to resign or of the joint written notice of Greeley and Wingfoot to remove, the Escrow Agent has not received a written designation of the successor Escrow Agent, the Escrow Agent's sole responsibility shall be in its sole discretion either to retain custody of the Escrow Deposit and apply the Escrow Deposit in accordance with this Agreement or to apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent and after such appointment to have no further duties or responsibilities in connection herewith upon the transfer of the Escrow Deposit to the successor Escrow Agent. Notwithstanding anything to the contrary set forth in this Agreement, if Escrow Agent is liable for the payment of any costs or expenses under this Agreement, the replacement of the Escrow Agent shall not release Escrow Agent of its obligation to pay all such costs and expenses in accordance with this Agreement.

Section 4.05. Execution in Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute one and the same instrument. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

Section 4.06. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by electronic mail with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than 3 Business Days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from

time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

If to Greeley: City of Greeley
1001 11th Street, 2nd Floor
Greeley, Colorado 80631
Attn: Director, Water and Sewer
Telephone: (970) ____ - ____
Email: _____

If to the Escrow Agent: _____

_____. CO 80____
Attn: _____
Telephone: (____) ____ - ____
Email: _____

If to Wingfoot: Wingfoot Water Resources
800 8th Avenue, Suite 122
Greeley, Colorado 80631
Attn: _____
Telephone: (720) 544-3932
Email: _____

Section 4.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the law of any jurisdiction other than the State of Colorado.

Section 4.08. Time of Essence. Time is of the essence in the performance of the obligations from time to time imposed upon the Escrow Agent by this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers as of the date first above written.

CITY OF GREELEY, COLORADO, ACTING
BY AND THROUGH ITS WATER
ENTERPRISE

By _____
_____, Mayor

ATTEST:

_____, City Clerk

WINGFOOT WATER RESOURCES, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY

By _____
Its _____

_____, _____, as the
Escrow Agent

By _____
_____, Vice President

**EXHIBIT G TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Wingfoot Environmental Representations and Warranties

(See Attached)

Wingfoot Environmental Representations and Warranties

The undersigned hereby certifies, solely in his capacity as officer or manager of Wingfoot (and not in his individual capacity), as required by Article 4 of the Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) (the "Agreement"), dated _____, 2020, by and between WINGFOOT WATER RESOURCES LLC ("Wingfoot") and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, ("City"), acting by and through its WATER ENTERPRISE ("Greeley"), that the following representations and warranties are true and correct as of the Effective Date to the current actual knowledge of Wingfoot:

A. The Assets are not currently being and have not been used in violation of applicable Environmental Laws or Environmental Permits. No storage tanks for Hazardous Substances are or were located on, in or under the Assets.

B. Wingfoot has not caused a Release on, at or from the Assets, or any facilities located thereon, and Wingfoot has not received any form of notice or inquiry from any federal, state or local government agency or authority, any operator, tenant, subtenant, licensee or occupant of the Assets or any other person with regard to a Release, at or from the Assets, or any facilities located thereon.

C. No event has occurred with respect to the Assets that is reasonably likely to constitute a violation of any currently applicable Environmental Law or non-compliance with any Environmental Permit held by Wingfoot.

D. There are no agreements, consent orders, decrees, judgments, licenses or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Assets which require any change in the present condition or use of the Assets or any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Assets that have not been disclosed in writing to Greeley.

E. There are no pending actions, suits, claims or proceedings which are reasonably likely to cause the incurrence of expenses or costs or which seek money damages, injunctive relief, remedial action or any other remedy that arise out of, relate to or result from (i) a material violation or alleged material violation of any applicable Environmental Law or material non-compliance or alleged material noncompliance with any Environmental Permit held by Wingfoot, (ii) the presence of any Hazardous Substance or a Release on, at or from the Assets or any facilities located thereon, or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Assets or the ownership, use, operation, sale, transfer or conveyance thereof.

F. It has not received notice that any treatment, storage or disposal facility, or any other place to which Hazardous Substances generated from the Assets by Wingfoot or any prior owner or operator or its agent were transported, delivered or came to be located (i) has

been, or is now the subject of any Release or threatened Release; (ii) has been, or is now, subject to any threatened or pending federal, state or local investigation relating to compliance with any Environmental Law; or (iii) has been, or is now, subject to any threatened or pending enforcement or remedial action.

G. There are no studies or surveys indicating the presence on the Property or the property subject to the State Land Board Lease of any species listed as endangered or threatened pursuant to Section 4 of the Endangered Species Act (16 U.S.C. Section 1533) or equivalent State statute.

The above representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) the Closing.

DATED AS OF THE 11 DAY OF June, 2020

WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company

By: 

Name: Christopher P. Dietzler

Title: Chief Executive Officer

CLOSING CERTIFICATION

The undersigned hereby certifies, solely in his capacity as officer or manager of Wingfoot (and not in his individual capacity), that to the current actual knowledge of Wingfoot, the representations and warranties of Wingfoot on Exhibit G, made as of the Effective Date, are true and correct in all material respects, and are unmodified or amended as of the Closing Date as though such representations and warranties were made at and as of the Closing Date; provided that such representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) Closing.

DATED as of the ____ day of _____, 20__.

WINGFOOT WATER RESOURCES LLC, a [Colorado/Delaware]
limited liability company

By: _____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

**EXHIBIT H TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Greeley Environmental Representatives and Warranties

(See Attached)

Greeley Environmental Representatives and Warranties

The undersigned hereby, solely in his or her capacity as an elected official, officer or employee of Greeley (and not in his or her individual capacity), makes and certifies, as required by Article 4 of the Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) (the “Agreement”), dated _____, by and between WINGFOOT WATER RESOURCES LLC (“Wingfoot”) and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“City”), acting by and through its WATER ENTERPRISE (“Greeley”), the following representations and warranties as of the Closing Date to the current actual knowledge of Greeley:

A. Greeley has complied in all material respects with the Greeley Environmental Covenants set forth in Section 5.5 of the Agreement.

B. Greeley has not caused a Release on, at or from the Assets, or any facilities located thereon except as otherwise disclosed on Exhibit H-1¹ attached hereto.

C. No event has occurred with respect to the Assets that is reasonably likely to constitute a violation of any currently applicable Environmental Law or non-compliance with any Environmental Permit except as otherwise disclosed on Exhibit H-1 attached hereto.

The above representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) Closing.

DATED as of the ____ day of _____, 20__.

¹ NTD: To be inserted based on Due Diligence.

Date: _____

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____

City Manager

By _____

City Attorney

AVAILABILITY OF FUNDS:

By _____

Director of Finance

RECOMMENDED:

By _____

Director of Water and Sewer Department

**EXHIBIT H-1 TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Environmental Violations and/or Releases

[To be completed by Greeley]

**EXHIBIT I TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

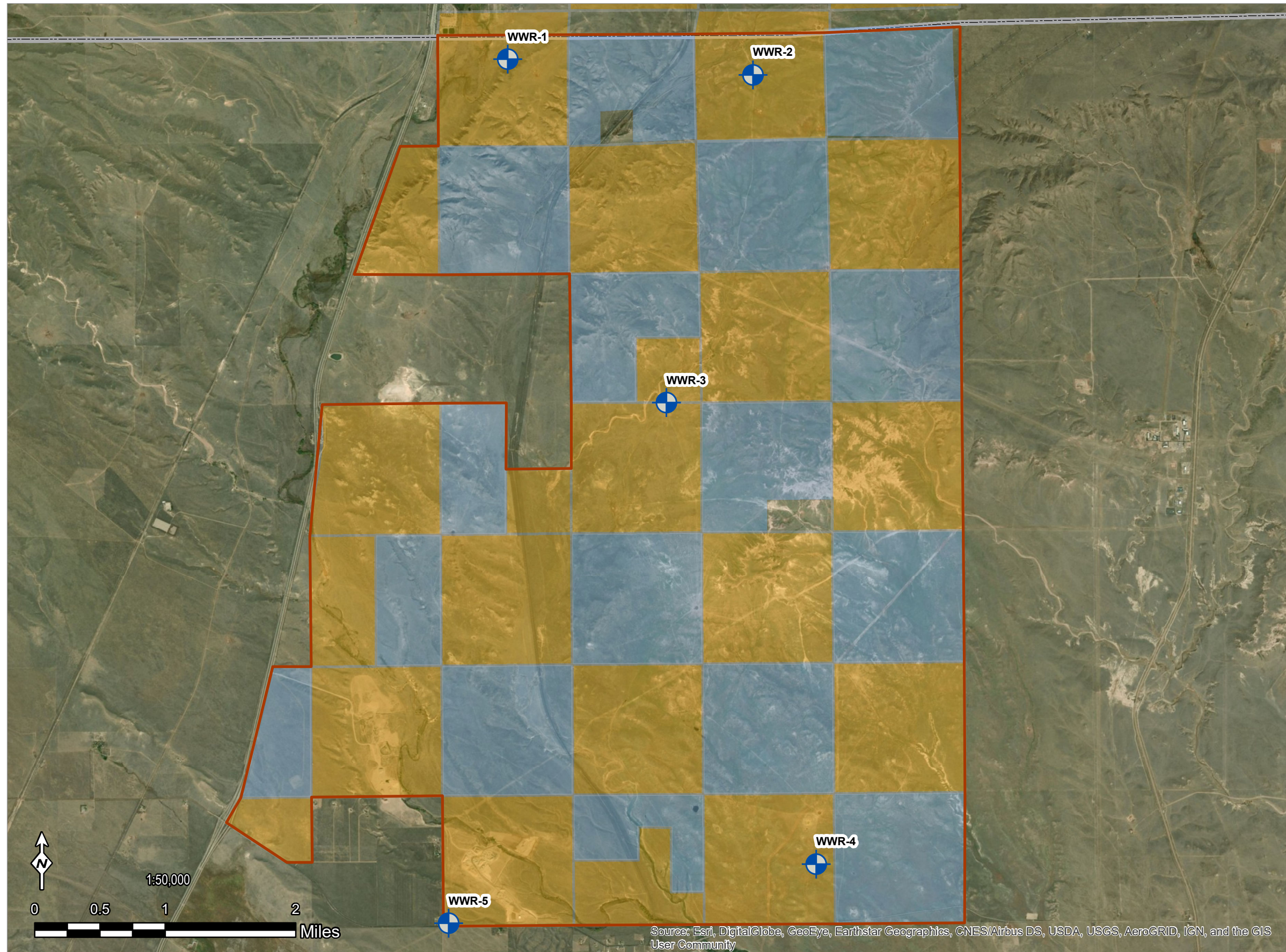
Existing Improvements






(See Attached)

LIST OF IMPROVEMENTS

PRODUCTION WELLS

- Production well WWR-1
 - NE ¼, Sec. 21, Township 12 N, Range 67 W (refer to Map of Production Wells, enclosed)
 - Major components include, but may not be limited to: 12.75-inch outside diameter steel pipe, 435 feet of plain casing and a total of 890 feet of 35-slot, continuous v-wire-wrap Type 304 stainless steel screen, 1,175 feet of SiLiBead filter pack, pitless adapter. Total depth of well is 1,345 feet below ground surface. “As is.”
- Production well WWR-2
 - NW ¼, Sec. 23, Township 12 N, Range 67 W (refer to Map of Production Wells, enclosed)
 - Major components include, but may not be limited to: 12.75-inch outside diameter steel pipe, 535 feet of plain casing and a total of 880 feet of 35-slot, continuous v-wire-wrap Type 304 stainless steel screen, 960 feet of SiLiBead filter pack, pitless adapter. Total depth of well is 1,425 feet below ground surface. “As is.”
- Production well WWR-3
 - NE ¼, Sec. 3, Township 11 N, Range 67 W (refer to Map of Production Wells, enclosed)
 - Major components include, but may not be limited to: 12.75-inch outside diameter steel pipe, 310 feet of plain casing and a total of 860 feet of 35-slot, continuous v-wire-wrap Type 304 stainless steel screen, 1,010 feet of SiLiBead filter pack, pitless adapter. Total depth of well is 1,180 feet below ground surface. “As is.”
- Production well WWR-4
 - SE ¼, Sec. 23, Township 11 N, Range 67 W (refer to Map of Production Wells, enclosed)
 - Major components include, but may not be limited to: 12.75-inch outside diameter steel pipe, 137 feet of plain casing and a total of 820 feet of 35-slot, continuous v-wire-wrap Type 304 stainless steel screen, 915 feet of SiLiBead filter pack, pitless adapter. Total depth of well is 965 feet below ground surface. “As is.”
- Production well WWR-5
 - SW ¼, Sec. 21, Township 11N, Range 67 W (refer to Map of Production Wells, enclosed)
 - Major components include, but may not be limited to: 12.75-inch outside diameter steel pipe, 207 feet of plain casing and a total of 800 feet of 35-slot, continuous v-wire-wrap Type 304 stainless steel screen, 980 feet of SiLiBead filter pack, pitless adapter. Total depth of well is 1,030 feet below ground surface. “As is.”



-  2019 Production Wells
-  Property Outline
-  Terry Grazing Association
-  State Land Board (within TGA)
-  State Boundary

Coordinate System:
 NAD 1983 HARN StatePlane Colorado North FIPS 0501 Feet

Map of Production Wells

DATE:	June 2020	
DRAWN:	JS	CHECKED: CD

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**EXHIBIT J TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Wingfoot General Representations and Warranties

(See Attached)

Wingfoot General Representations and Warranties

The undersigned hereby certifies, solely in his capacity as officer or manager of Wingfoot (and not in his individual capacity), as required by Article 4 of the Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) (the "Agreement"), dated _____, 2020, by and between WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company ("Wingfoot") and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, ("City"), acting by and through its WATER ENTERPRISE ("Greeley"), that the following representations and warranties are true and correct as of the Effective Date to the current actual knowledge of Wingfoot:

A. Compliance with Governmental Regulations. There are no orders or directives of any city, county, state or federal authority, for repairs, maintenance work or improvements to be performed on Terry Ranch. Wingfoot has received no notice from any municipal, state or other statutory authority relating to non-compliance with any building code or restriction, applicable to the Assets that has not been corrected, or any notice of or impending expropriation or condemnation of Terry Ranch or the Assets.

B. Litigation. There is no dispute, action or litigation pending or threatened respecting the ownership or use of the Assets or other interests related thereto.

C. Status. Wingfoot has all requisite legal power and authority to own and convey the Assets and perform all of the terms of the Agreement.

D. Compliance with Law. Wingfoot has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Assets, and to Wingfoot's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Wingfoot which is reasonably likely to constitute a Material Adverse Effect on the Assets.

E. Zoning. Wingfoot has not given its consent to, and to Wingfoot's current actual knowledge, there are no pending requests for, zoning variances or changes with respect to the Terry Ranch or its zoning.

F. Entity Representations.

(i) Wingfoot is and, at all times since its inception, has been duly formed, validly existing, and in good standing in the State of Colorado and in all other jurisdictions where Wingfoot is qualified to do business as of the date hereof.

(ii) Wingfoot is not now a party to any lawsuit, arbitration, summons or legal proceeding (including, without limitation, any dispute with a taxing authority), and there are no unpaid judgments or outstanding judgment or tax liens of any nature against Wingfoot except for tax liens not yet due.

(iii) Wingfoot has filed all tax returns required to be filed by Wingfoot and has paid all taxes which are due and payable by Wingfoot as of the date hereof, except for accrued taxes or taxes disputed by Wingfoot.

(iv) Wingfoot has never owned, leased, operated or possessed any real property other than the Assets owned by Wingfoot on the date hereof, and Wingfoot has never engaged in any business other than the ownership and operation of the Assets and matters relating thereto.

(v) There is (a) no UCC financing statement filed against Wingfoot that has not been terminated, (b) no lien against Wingfoot other than (1) liens for taxes not yet due and payable or being contested in good faith; (2) mechanics', carriers' workmens', repairmens' or other like liens, none of which are material; (3) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property, which either have been disclosed to Greeley or which do not adversely affect the operation of Wingfoot in any material respect; and (4) liens, encumbrances, imperfections, in title, charges, matters of record, easements and restrictions which, individually or in the aggregate, do not materially impair the intended use of the Assets, (c) no unpaid judgment against Wingfoot, and (d) no bankruptcy case in which Wingfoot is the debtor.

(vi) Wingfoot has no currently outstanding liabilities not related to the Assets or its related business.

G. Encumbrances. Wingfoot has not encumbered the Assets nor granted any property or contract right relating to the Assets, except for the Permitted Exceptions and the rights granted to Greeley under the Agreement.

The above representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) Closing.

DATED as of the 11 day of June, 2020

WINGFOOT WATER RESOURCES LLC, a Colorado limited
liability company

By:  _____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

CLOSING CERTIFICATION

The undersigned hereby certifies, solely in his capacity as officer or manager of Wingfoot (and not in his individual capacity), that the representations and warranties of Wingfoot on Exhibit J, made as of the Effective Date, are true and correct in all material respects, and are unmodified or amended as of the Closing Date as though such representations and warranties were made at and as of the Closing Date; provided that such representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) the date which is six (6) months after Closing.

Additionally, the undersigned hereby certifies, solely in his capacity as officer or manager of Wingfoot (and not in his individual capacity), that the following representations and warranties are true and correct in all material respects as of the Closing Date; provided that such representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) the date which is six (6) months after Closing:

A. Contracts, Leases and Agreements. From the Effective Date of the Agreement until the Closing, unless consented by Greeley in writing, Wingfoot has not entered into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Assets or the performance of services on the Assets or by which Greeley is obligated or liable to any third party in relation thereto.

DATED as of the ____ day of _____, 20__.

WINGFOOT WATER RESOURCES LLC, a [Delaware/Colorado]
limited liability company

By: _____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

**EXHIBIT K TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Greeley General Representations and Warranties

(See Attached)

Greeley General Representations and Warranties

The undersigned hereby certifies, solely in his or her capacity as an elected official, officer or employee of Greeley (and not in his or her individual capacity), as required by Article 4 of the Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) (the “Agreement”), dated _____, by and between WINGFOOT WATER RESOURCES LLC (“Wingfoot”) and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“City”), acting by and through its WATER ENTERPRISE (“Greeley”), that the following representations and warranties are true and correct as of the Effective Date to the current actual knowledge of Greeley:

A. Status. Greeley has all requisite legal power and authority to own and accept the Assets, and enter into and perform the terms of the Agreement.

B. Compliance with Law. Greeley has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the purchase of the Assets and entry into the Agreement.

C. Disclosure of Limitations on Enforcement. There is no proposed order, judgment, decree, law (including state laws applicable to Greeley or any relevant county or city code provision or ordinance) or proceeding applicable to Greeley that is reasonably likely to materially and adversely affect Wingfoot’s ability to enforce the terms of the Agreement, except as expressly provided in the Agreement.

D. Financial Capability to Close and Perform Payment Obligations. Greeley has adequate cash reserves to meet its obligations at Closing and Closing is not contingent on the borrowing of funds, extension of Greeley’s credit, or any payments for which funds are unavailable. To Greeley’s current actual knowledge there is no reason as of the date of execution of the Agreement to believe that it will be unable to satisfy its monetary obligations pursuant to the Agreement, if any, when due.

The above representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) Closing.

DATED as of the ____ day of _____, 20__.

Date: _____

THE CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation,
acting by and through its WATER
ENTERPRISE

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____
City Manager

By _____
City Attorney

AVAILABILITY OF FUNDS:

By _____
Director of Finance

RECOMMENDED:

By _____
Director of Water and Sewer Department

CLOSING CERTIFICATION

The undersigned hereby certifies, solely in his or her capacity as an elected official, officer or employee of Greeley (and not in his or her individual capacity), that the foregoing representations and warranties, made as of the Effective Date, are true and correct in all material respects, and are unmodified or amended as of the Closing Date as though such representations and warranties were made at and as of the Closing Date; provided that such representations and warranties shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Agreement or (ii) the date which is six (6) months after Closing.

DATED as of the ____ day of _____, 20__.

Date: _____

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____

City Manager

By _____

City Attorney

AVAILABILITY OF FUNDS:

By _____

Director of Finance

RECOMMENDED:

By _____

Director of Water and Sewer Department

**EXHIBIT L TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Tenancy in Common Agreement

(See Attached)

TENANCY IN COMMON AGREEMENT

for

TERRY RANCH PROPERTY

Dated _____, 2020

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TENANCY IN COMMON AGREEMENT

THIS TENANCY IN COMMON AGREEMENT (this “**Agreement**”) is effective as of _____, 2020 (the “**Effective Date**”), by and between WINGFOOT WATER RESOURCES, a [Colorado/Delaware] limited liability company (“**Wingfoot**”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“**Greeley**” or “**City**”), acting by and through its Water Enterprise (the “**Enterprise**”) (each, an “**Original Owner**” and collectively the “**Original Owners**”).

RECITALS:

WHEREAS, the Original Owners have executed that certain MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION AGREEMENT (Terry Ranch) (the “**Master Agreement**”) providing for ownership, as tenants-in-common, of certain property (the “**Property**”) comprised of (i) nontributary deep aquifer ground water rights, underlying real property in Weld County, Colorado, legally described on **Exhibit A-1** and depicted on **Exhibit A-2** (“**Terry Ranch**”), adjudicated and quantified on June 14, 2018, in Case Number 11CW275, District Court, Water Division 1, Colorado, and further described in that certain Special Warranty Deed, dated September 30, 2016, recorded October 17, 2016 in the real property records of the Clerk and Recorder for Weld County, Colorado (the “**Records**”), at Reception Number 4245308, and that certain Special Warranty Deed, dated April 30, 2018, recorded May 1, 2018 in the Records at Reception Number 4394951 (“**Water Rights**”), and (ii) certain Ancillary Assets (defined below);

WHEREAS, pursuant to the terms of the Master Agreement, Wingfoot has sold, and Greeley has purchased, an undivided 10/12,121th interest in the Property by delivery of the deed and assignment duly executed and acknowledged, attached as **Exhibits B-1** and **B-2**, and the Original Owners contemplate additional conveyances of the Property from Wingfoot (or certain third parties) to Greeley pursuant to this Agreement and the Master Agreement; and

WHEREAS, the Owners (as defined below) desire to set forth in this Agreement certain terms and conditions regarding (i) the Property and the Owners’ co-ownership of the Property, (ii) the Management (as defined below) of the Property, including rights and responsibilities with respect to additional partial conveyances of the Property and obtaining orderly determinations with respect to such Management, and (iii) certain other arrangements regarding the Owners’ rights and interests with respect to the Property and the Master Agreement;

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Owners contained herein, and other good and valuable consideration, the receipt and total sufficiency of which are hereby acknowledged, the Owners agree as follows:

ARTICLE 1 DEFINITIONS

Unless defined in this Agreement, capitalized terms used and not defined herein shall have the meanings ascribed to them in the Master Agreement. In addition to terms defined elsewhere in this Agreement, as used herein, the following terms shall have the definitions set forth below:

“**Access Easement**” means the easement held by Owners, as the owner of the Water Rights, to access Terry Ranch for purposes more fully described therein, attached as **Exhibit C**.

“**Administrator**” means Greeley, together with its authorized employees, agents and designees.

“**Affiliates**” means, with respect to any Person, any individual or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such Person. The term “control,” as used in the immediately preceding sentence, means the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares or other equity interests of the controlled corporation or other entity, or the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or governance of the controlled entity.

“**Ancillary Assets**” means (i) the Access Easement, (ii) any and all other rights, privileges and appurtenances owned by Wingfoot, without warranty of any type, which relate to or are used in connection with the Water Rights and the assets listed in this sentence, to the extent assignable, and (iii) all of Wingfoot’s right, title and interest, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development or use of the assets described in this sentence.

“**Co-tenancy**” means the Owners with respect to their collective co-tenancy in the Property.

“**Deed**” has the meaning given in Section 6.3.

“**Law**” means any federal, state or local constitution, statute, code, ordinance, rule, regulation, judicial or administrative decision or other rule of law.

“**Leases**” means all leases and other agreements for the use and occupancy of space or granting an interest in real property entered into by the Owners or their predecessors-in-interest with respect to all or a portion of Property.

“**Lien**” means any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, option, right of first offer or refusal, preemptive rights, or any other encumbrance, charge or transfer of, on or affecting the Property or any portion thereof or interest therein including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, control agreement, and mechanic’s, materialmen’s, tax, judgment and other similar liens and encumbrances.

“**Management**” means, with respect to the Co-tenancy, the Owners’ use, operation, maintenance, leasing, financing and disposition of the Property.

“**Owner**” means any of the Original Owners or Third Party Owners, with the collective Original Owners and Third Party Owners (if any) referred to as “**Owners**”.

“**Percentage Ownership Interest**” means each Owner’s (and Third Party Owner’s, as applicable) undivided interest in the Property, expressed as a percentage or fraction of the entire Property.

“**Person**” means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or other entity whatsoever, any federal, state, county or municipal government, or any bureau or department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Property**” shall have the meaning given in the Recitals hereto.

“**State**” means the State of Colorado.

“**Third Party Owner**” means any Person other than the Original Owners who acquires and owns (for any period of time) an undivided interest as a tenant in common in the Property and executes a Deed (in compliance with Section 8.1), and two or more such Persons being referred to herein collectively as “**Third Party Owners**”.

“**Unanimous Consent Action**” means any event, action or matter which requires the consent or approval of the Original Owners pursuant to the terms of this Agreement as further described in Section 2.8 of this Agreement.

ARTICLE 2

INVESTMENT IN AND MANAGEMENT OF THE PROPERTY

2.1. **Purpose and Scope of Investment.** The Owners hereby enter into this Agreement and agree to the terms, conditions and provisions hereof for the purpose of regulating their ownership and Management of the Property.

2.2. **Acquisition of Property.** The Owners, as limited by this Agreement, including Section 6.3, own the Property in their respective names as tenants in common under Colorado law, with each Owner owning an undivided interest in the Property in the amount of their respective Percentage Ownership Interests. As of the Effective Date of this Agreement, the initial Percentage Ownership Interests of the Owners are set forth on **Exhibit D** attached to this Agreement. Any changes to the Percentage Ownership Interests shall be documented and recorded in the Registry, as further described in the Master Agreement.

2.3. **Use of Property.** Each of the Owners agrees that it shall exercise its rights to use the Property only pursuant to and in accordance with the terms of this Agreement and the Master Agreement. Each Owner hereby agrees that during the Term (defined below) it will not exercise its rights as a tenant in common, or any of its rights to use or improve the Property or to lease or sell the Property to any Person, except as (and subject to the conditions and restrictions) provided in this Agreement and the Master Agreement.

2.4. **Indebtedness.** Each Owner agrees that it will not incur any indebtedness secured by the Property, or allow any Lien to be placed on the Property, subject to Greeley's right to incur debt or payment obligations, unsecured by the Property, in the ordinary course of its business, including the Enterprise's right to issue water bonds unsecured by the Property.

2.5. **Term of Agreement.**

(a) The term of this Agreement (the "**Term**") shall commence on the Effective Date, and shall end upon the sooner of the following to occur (each, a "**Termination Event**"):

(i) either of the Original Owners acquiring all of the undivided interests in the Property such that any Owner's Percentage Ownership Interest is one hundred percent (100%); and

(ii) subject to Section 8.3 of the Master Agreement, the date which is ten (10) years after the Closing Date.

(b) Upon the occurrence of a Termination Event, this Agreement shall not be terminated and shall continue until the winding up of the affairs of the Owners under Section 7.1 of this Agreement is completed.

2.6. **Controlling Agreement.** This Agreement is intended to be the governing agreement between the parties regarding their co-tenancy in common in the Property, but remains expressly subject to the Master Agreement in all respects. In the event of any inconsistency between the terms of the Master Agreement, or any portion thereof, and the terms of this Agreement, the applicable terms of the Master Agreement shall prevail.

2.7. **Management of the Property.**

(a) Except as provided in and limited by Section 2.8 and the Master Agreement, the Administrator shall have full authority to take the following actions with respect to the Property, including executing and delivering all documents in connection therewith:

(i) holding, operating, managing, maintaining, improving, and repairing the Property, including constructing the Project Infrastructure (as that term is defined in the Master Agreement) and operating the Water Distribution System (as that term is defined in the Master Agreement) on the Property in accordance with the Master Agreement;

(ii) depositing funds in banks or with an escrow agent and authorizing withdrawals therefrom (except as limited by the Master Agreement, including provisions regarding the Construction Escrow and Prorated Escrow), to pay the legitimate expenses of the Co-tenancy, on the signature of such person as the Administrator determines; and

(iii) acquiring and contracting for products, insurance and other goods and services for use in the ordinary course of the Co-tenancy's operation and in connection with construction of the Project Infrastructure and the operation of the Water Distribution System.

(b) The Administrator shall maintain the records of the Property, including copies of any documents executed or maintained by the Administrator in its Management of the Property. Each Original Owner may inspect and make copies of the records maintained by the Administrator and related to the Property during the Administrator's regular business hours and upon reasonable prior notice to the Administrator; provided, however, that any out-of-pocket expenses incurred by an Original Owner's inspection shall be borne solely by the Original Owner conducting such inspection. The Administrator will provide annual financial information related to the Property and Assets within ninety (90) days of the applicable calendar year end to each Original Owner sufficient to allow each Original Owner to complete federal, state and local income tax returns.

(c) Except as otherwise provided in this Agreement or the Master Agreement, the Administrator shall have the exclusive right to use and access the Property including, but not limited to, enjoyment of the rights set forth in the Ancillary Assets, to achieve the stated purposes set forth in the Master Agreement and this Agreement. All elements of the Project Infrastructure and the Water Distribution System constructed on the Property by Administrator shall be the sole property of Greeley and no other Owner shall have any ownership interest therein. Any other Original Owner or Third-Party Owner may only access and use the property upon (i) written permission from the Administrator or (ii) upon any default by the Administrator under this Agreement or the Master Agreement.

2.8. **Unanimous Consent Actions.**

(a) All actions with respect to the Property not enumerated in Section 2.7 shall be Unanimous Consent Actions, and such Unanimous Consent Actions cannot be taken by the Administrator without the prior consent of all of the Original Owners pursuant to Section 2.9. Notwithstanding anything to the contrary in this Agreement, the Administrator may not take any action with respect to the Property that is inconsistent with its rights and obligations under the Master Agreement, even with the consent of the Original Owners.

(b) Unanimous Consent Actions include, but shall not be limited to, the following:

(i) On behalf of the Owners, acquisition of any property by purchase, lease, or otherwise to be held by the Owners as tenants in common pursuant to the terms of this Agreement, other than

(A) the Property, and

(B) the proceeds of the Property;

(ii) sell or otherwise transfer the Property or any ownership interests in the Property, except for Third Party Transfers described in Section 8.1;

(iii) Except for transactions contemplated by the Master Agreement, give or grant any options, rights of first refusal, deeds of trusts, mortgages, pledges, security interests, other encumbrances, or other interests in or to the Property, any portion thereof, or Percentage Ownership Interest;

(iv) cause or permit any loans to be made in relation to the Co-tenancy or allow the Co-tenancy to become a surety, guarantor, endorser, or accommodation endorser for any person, firm or corporation;

(v) enter into a Property management agreement or assignment of Administrator's rights;

(vi) on behalf of the Owners, enter into any written employment agreement or severance arrangement with any individual, or amending or terminating any such agreement;

(vii) modify, amend or waive, in any material respect, the terms and conditions of this Agreement;

(viii) bring onto the Property, or permit to be brought onto the Property, any hazardous or toxic substance or material regulated by the State of Colorado, the United States of America, or any other government authority with applicable jurisdiction, except to the extent that the hazardous or toxic substances are of a type or quantity the presence, use, storage, release or handling of which does not constitute a violation of any applicable environmental laws and is customarily employed in the ordinary course of, or associated with, drilling and water treatment and construction of infrastructure relating to same in the State of Colorado.

2.9. **Approval Process.** Any Unanimous Consent Action must be approved by a written instrument signed by each Original Owner that sets forth the approval of the subject matter at issue. An Original Owner may request approval by delivering to the other Original Owner written notice requesting approval of a Unanimous Consent Action (an “**Approval Notice**”). Any Approval Notice not executed by both Original Owners shall be deemed to be disapproved by the Original Owners. Such approval or disapproval, as applicable, shall be binding upon each Owner. The approval or disapproval by an Original Owner of a matter shall not be deemed to waive or render unnecessary approval to or for any similar or subsequent act or request.

2.10. **Binding Authority.** Consistent with (and as limited by) Section 2.8, the Administrator shall have the power and authority to act on behalf of the Owners.

ARTICLE 3 RELATIONSHIP AMONG OWNERS

3.1. **Nature of Ownership Relationship.** Each Owner owns an undivided interest in the Property, subject to Section 6.3, describing the nature of ownership acquired by Third Party Owners. The percentage of each Owner’s undivided interest in the Property as of the Effective Date is reflected on **Exhibit D** and shall be maintained and amended in the Registry. Nothing in this Agreement shall modify the nature of an Owner’s interest as an owner of an undivided interest in the Property as a tenant-in-common. In the event of any change in the Percentage Ownership Interests of the Owners, whether pursuant to this Agreement or the Master Agreement, the Owners agree to update the Registry pursuant to the Master Agreement, and each Owner, on its own behalf, shall cooperate and shall execute any documents in connection therewith.

3.2. **Disclaimer of Partnership and Fiduciary Relationship; Tax Reporting.**

(a) The Owners expressly intend that their relationship shall be that of co-tenant owners of the Property. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create: (i) a joint venture, partnership or other similar relationship between or among the Owners, and each of the Owners hereby expressly waives and disclaims any such joint venture, partnership or similar relationship or (ii) any fiduciary relationship between or among the Owners, and each Owner hereby expressly disclaims any such fiduciary relationship. The Owners intend that the tenancy in common created by this Agreement not be treated as a partnership for federal and state income tax purposes and each Owner agrees that it will prepare or cause to be prepared its federal and applicable state income tax returns (or, if applicable, its beneficial owners' federal and applicable state income tax returns) in a manner consistent with such intention, unless otherwise required by law. The Owners, in addition, may not hold themselves or the Co-Tenancy out collectively as one entity or under one name or conduct business holding forth as one entity. The Original Owners' activities shall be limited to those customarily performed in connection with the maintenance, repair and operation of the Property, taking into account all activities of the Owners, their agents and any person related to the Owners. Third Party Owners' actions shall at all times be expressly limited as described in Section 6.3. Notwithstanding any terms or conditions contained herein, all terms and conditions hereof are subject to the terms and conditions of the Internal Revenue Code as may be necessary to establish and maintain the relationship of the parties strictly as co-tenants.

(b) The Owners shall be subject to any and all restrictions in the Master Agreement concerning an Owner's right to engage in or possess an interest in other business ventures, whether or not in competition with the Property, including, but not limited to, limitations on Wingfoot's activities provided in the Master Agreement.

(c) Wingfoot was and is organized solely for the limited purpose of obtaining real property rights and related assets and rights regarding water and water-related projects and carrying out the transactions contemplated by the Master Agreement as provided in the Amended and Restated Limited Liability Company Operating Agreement of Wingfoot dated _____, 2020 (the "**Wingfoot Operating Agreement**") and during the Term of this Agreement, Wingfoot agrees to maintain its existence and at all times conduct its business operations in a manner consistent in all material respects with the Wingfoot Operating Agreement.

3.3. **Waiver of Right to Partition.** Having been previously advised of their respective rights to bring an action for partition under the Laws of the State (“Action for Partition”), each of the Owners hereby covenants and warrants that it will not bring, pursue or maintain an action (a) for partition with respect to the Property or (b) to compel any sale thereof under the Laws of the State as from time to time in effect, and each Owner hereby irrevocably waives its rights to bring an action for partition with respect to the Property or to compel any sale thereof. In connection with the foregoing, the Owners acknowledge and agree that each of them has been induced to enter into this Agreement in reliance on the aforementioned covenants, warranties and waivers of the other Owners and, without such covenants, warranties and waivers, no Owner would have entered into this Agreement. The Owners expressly acknowledge and agree that the foregoing covenants may be enforced by an action for specific performance or injunction preventing an Owner from bringing or maintaining an action for partition.

ARTICLE 4 SHARING OF COSTS AND EXPENSES

4.1. **Sharing of Income and Expenses.**

(a) All income arising from or with respect to the Original Owners’ interests in the Property shall be allocated, distributed and deposited as described in the Master Agreement. Except as provided in the Master Agreement, including Wingfoot’s obligations under Article 9 of the Master Agreement, Greeley shall be solely responsible for all expenses arising out of the business of the Co-tenancy and the operating, managing, maintaining, improving, and repairing of the Property, Project Infrastructure and Water Distribution System.

(b) For the avoidance of doubt, the sale of Raw Water Credits (as that term is defined in the Master Agreement) by Wingfoot shall not be considered income arising from the Owners’ interest in the Property, and such sale shall not be subject to the terms of this Agreement.

ARTICLE 5 OWNERS’ FUNDING OBLIGATIONS

5.1. **Costs other than Project Infrastructure.** Except as provided in the Master Agreement with respect to Wingfoot’s Cash Contribution commitments related to Project Infrastructure (as that term is defined in the Master Agreement), Greeley shall be solely responsible for contribution and funding for all costs associated with operating, managing, maintaining, improving, and repairing of the Property, and Greeley shall have no right or authority to seek contribution from Wingfoot or the other Owners for such costs and expenses.

ARTICLE 6 RIGHTS OF OWNERS

6.1. **Limitation on Owners’ Rights.**

Except as expressly provided in this Agreement or the Master Agreement, no Owner shall have the authority or power to act for or on behalf of the other Owners or to exercise any rights with respect to the ownership or Management of the Property, or to do any act that would be binding on the other Owners, or to make or incur any expenditures or liabilities on behalf of the Property or the other Owners. Each Owner hereby waives any rights it may have at law or in equity to use of the Property separate and apart from rights granted under and pursuant to this Agreement and the Master Agreement. Further, each Owner agrees that it will not incur any expense with respect to the Property except and to the extent permitted under and pursuant to this Agreement or the Master Agreement, and no Owner shall be liable to any Owner who incurs any expense or cost with respect to the Property, except as provided in this Agreement or the Master Agreement.

6.2. **Liability for Certain Acts.**

(a) The Administrator shall perform its duties in good faith, in a manner it reasonably believes to be in the best interests of the Owners and with such care as an ordinarily prudent person in a similar position would use under similar circumstances.

(b) Except as provided in the Master Agreement, the Administrator shall not be liable to the Owners for any loss or damage sustained by the Owners, unless:

(i) the loss or damage shall have been the result of gross negligence, bad faith or involve intentional misconduct or violation of Law by the Administrator;

(ii) the Administrator gained a financial profit or other advantage to which it was not legally entitled to the detriment of the Owners; or

(iii) entered into any agreement, transaction or arrangement with Greeley, the Enterprise or their Affiliates unless on commercially reasonable terms.

6.3. **Limitation on Third Party Owners.** Notwithstanding anything to the contrary in this Agreement, Third Party Owners shall have no right to participate in the ownership or management of the Co-tenancy or the Property. Third Party Owners shall have no right to use, access, encumber, convey, or otherwise engage in any activity whatsoever with respect to the Property, Co-tenancy, or any interest therein, except as expressly granted by the Deed attached to the Master Agreement as Exhibit Q (the “**Deed**”). Third Party Owners shall have no right or claim to (i) incomes, revenues or other beneficial use of the Property, (ii) approve decisions of the Administrator, or (iii) appoint or remove the Administrator. For the sake of clarity, Third Party Owners shall be subject to all other limitations and restrictions applicable to Owners in this Agreement, and if applicable, to such restrictions in the Master Agreement.

6.4. **Removal and Designation of Successor Administrator.** If, after the Effective Date of this Agreement, the Administrator (i) sells, transfers or has a loss of title to its interest in the Co-tenancy, (ii) is no longer capable of serving as Administrator, or (iii) provides thirty (30) day advance written notice of its voluntary resignation as Administrator, then the Administrator shall be deemed to have resigned without any action by the other Owners. Upon resignation of the Administrator, a successor Administrator shall be selected by Wingfoot.

ARTICLE 7 TERMINATION AND WINDUP

7.1. **Termination of the Tenancy in Common.** Upon the occurrence of any Termination Event, this Agreement and the Co-tenancy shall continue until the affairs of the Co-tenancy are diligently wound up. If determined necessary by all of the Original Owners, a person selected by the Original Owners shall act as liquidator to wind up the Co-tenancy. Such liquidator shall have full power and authority, subject to the Master Agreement, to sell, assign and encumber any or all of the assets of the Co-tenancy for the express purpose of facilitating vesting of one hundred percent (100%) ownership of the Property in a single Original Owner.

ARTICLE 8 RESTRICTION ON TRANSFER OF AN OWNERSHIP INTEREST

8.1. **Third Party Transfers.** Wingfoot may transfer its interest in the Co-tenancy and the Property to a Third Party Owner pursuant to the terms of the Master Agreement (a “**Third Party Transfer**”). A Third Party Transfer shall be effective only upon the execution of the Deed in addition to the other requirements set forth in Section 8.2 of the Master Agreement. Any purported sale, transfer or conveyance of an interest in the Property contrary to the terms of this Agreement or the Master Agreement shall be void. For the avoidance of doubt, each Third Party Owner acknowledges and agrees that, upon its acquisition of any interest in the Property or the Co-tenancy as part of a Third Party Transfer, such interest acquired must be immediately conveyed to Greeley pursuant to the terms of the Master Agreement.

8.2. **Transferability of Ownership Interests.** No Owner shall have the right to sell its Percentage Ownership Interest to a third party, or to mortgage, pledge or encumber its Percentage Ownership Interests except as provided in this Agreement (including but not limited to Section 8.1 of this Agreement) or the Master Agreement (including but not limited to Section 8.2 of the Master Agreement). The transfer or sale of any Raw Water Credits shall not be considered to be a transfer of any Owner’s Percentage Ownership Interest or a transfer of an interest in the Property.

ARTICLE 9 LIABILITIES, EXCULPATION AND INDEMNIFICATION

9.1. **Disclaimer of Liability.** No individual Owner shall be personally liable for any act of the other Owner or any act by the Administrator. No individual Owner shall be responsible or liable for any indebtedness or obligation of the other Owner or the Administrator, incurred either before or after the execution of this Agreement.

9.2. **Indemnification of Administrator.** Each Owner, on its own behalf, to the extent of its respective net assets of its Percentage Ownership Interest, shall indemnify, defend and save harmless the Administrator from and against any claims, demands, damage, loss, liability (whether tort, contract or otherwise), cost or expense (including, but not limited to, reasonable attorneys' fees), incurred by it in connection with or resulting from any act or omission to act on behalf of the Co-tenancy, *provided* that the Administrator's action (or omission) was performed in compliance with this Agreement, including Article 2, and the Master Agreement. In no event shall any Owner be obligated to indemnify the Administrator for (i) any special, punitive, consequential or treble damages, or (ii) any claims or causes of action arising out of the Administrator's negligence, willful misconduct, fraud (actual or constructive), breach of contract, or any other tortious or illegal conduct, whether by action or omission of the Administrator.

ARTICLE 10 MISCELLANEOUS

10.1. **Notices.** Any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Owner giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to each other Owner at the address set forth below and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Section: (i) on the date and at the time of delivery if delivered personally to the Owner to whom notice is given at such address; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Owner to whom notice is given at such address; (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Owner to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; (iv) if a facsimile number is specified, on the date and at the time shown on the facsimile; or (v) if an e-mail address is specified, on the date and at the time shown on the sent e-mail message if sent to the e-mail address specified below:

If to Wingfoot:

Wingfoot Water Resources, LLC
800 8th Ave, Ste 122
Greeley, CO 80631
Telephone: (720) 544-3932

With a copy to:

Hogan Lovells US LLP
1601 Wewatta St, Ste. 900
Denver, CO 80202
Telephone: (303) 899-7300
Email: scot.anderson@hoganlovells.com
ana.gutierrez@hoganlovells.com
mark.heimlich@hoganlovells.com

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
Email: Sean.Chamber@greeleygov.com
Adam.Jokerst@greeleygov.com
WSAdmin@Greeleygov.com

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Facsimile: (970) 350-9763
Email: Douglas.Marek@Greeleygov.com
Jerrae.Swanson@Greeleygov.com
CityAttorney@Greeleygov.com

Any Person may change its address for notice under this Agreement by sending notice thereof to all other address parties hereunder in accordance with the provisions of this Section 10.1. Any such notice of change of address shall be effective fifteen (15) days after the same is deposited with the United States Postal Service.

10.2. **Successors and Assigns.** All provisions, conditions, covenants, restrictions, obligations and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding upon and shall inure to the benefit of each of the Owners and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "**Successors**"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Owner in favor of the interest of every other Owner; shall create reciprocal rights and obligations between the respective Owners, their interests in the Property, and their Successors; and shall, as to each of the Owners and their Successors, operate as covenants running with the land, for the benefit of the other Owners pursuant to applicable law, including, but not limited to, the laws of the State. It is expressly agreed that each covenant contained herein (a) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Owners, (b) runs with the undivided interest in the Property of each Owner and (c) benefits and is binding upon each Successor owner during its ownership of any undivided interest in the Property, and each owner having any interest therein derived in any manner through any Owner or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement contained in the instrument conveying such interest in the Property to such person or entity. The Owners agree that, subject to the restrictions on transfer and on Third-Party Owners, any Successor shall become a party to this Agreement upon acquisition of an undivided interest in the Property. Wingfoot may assign its interest under this Agreement (or in the Property) as provided in the Master Agreement.

10.3. **Governing Law, Jurisdiction.** This Agreement, and any instrument or agreement required, or disputes arising, hereunder (to the extent not otherwise expressly provided for therein), shall be construed in accordance with, and all matters arising out of or in connection with this Agreement (whether in contract, tort or otherwise) shall be governed by, the laws of the State of Colorado without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction.

10.4. **No Waiver of Governmental Immunity/No Third Party Beneficiary.** This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities Greeley or their officers, employees, successors and assigns may present pursuant to law, including, but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended. Greeley represents and agrees that, pursuant to C.R.S. § 24-10-106, its and the Enterprise's governmental immunity is limited to claims for injury that lie in tort or could lie in tort. Under existing law, Greeley and the Enterprise are not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon contractual obligations, including this Agreement; provided, however, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the privileges or immunities Greeley, the Enterprise, or their officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

10.5. **Amendment.** Notwithstanding anything herein to the contrary, this Agreement may be amended only by a written agreement executed by both of the Original Owners.

10.6. **Waiver; Ratification.** No waiver by the Owners of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such Owner of any other covenant or condition hereunder. Any failure of an Owner to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Owner thereafter to enforce any and each such provision.

10.7. **Attorney Fees.** If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement or to enforce any indemnity, the prevailing Owner shall be awarded its attorneys' fees and expenses, in addition to any other relief granted. The phrase "prevailing Owner" shall include an Owner who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

10.8. **Headings.** The Article, Section and paragraph headings in this Agreement are used only for convenience in finding the subject matters and are not part of this Agreement or to be used in determining the intent of the parties or otherwise in interpreting this Agreement.

10.9. **Recordation.** This Agreement and the agreements of the Owners contained herein shall be covenants running with the land. This Agreement or a memorandum containing a summary notice of the terms hereof shall be recorded by Greeley in the real property records of the clerk and recorder of Weld County, Colorado.

10.10. **Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the Original Owners and all Original Owners consent to the use of electronic signatures.

10.11. **Integration with Other Agreements.** This Agreement and all attachments, together with the Master Agreement, and all attachments and all documents contemplated thereby, constitutes the entire agreement of the Owners with respect to the matters set forth herein and therein, provided that nothing contained in this Agreement shall be deemed to amend, modify, alter or otherwise affect any of the provisions of the Master Agreement, which shall control pursuant to Section 2.6.

10.12. **Legal Construction.** In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid or unenforceable, the invalidity or unenforceability will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had not been contained in this Agreement and, in lieu of each invalid and unenforceable provision, there will be added automatically a part of this Agreement a provision as similar in terms to the invalid or unenforceable provision as may be possible and be valid and enforceable.

10.13. **Joint Effort and Review.** Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party. The Parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

10.14. **Dispute Resolution and Jury Trial Waiver.** If any dispute arises under this Agreement (including as to whether any Owner has breached this Agreement), then any Owner may require that the Owners engage in nonbinding dispute resolution processes upon delivery of written notice to all other Owners (a “**Dispute Notice**”) setting forth the disputed matter. Upon receipt by all Owners of such Dispute Notice, the Owners shall use their commercially reasonable efforts to negotiate a resolution of the dispute for a period of thirty (30) days (the “**Dispute Resolution Period**”) which may include mediation using a mediator chosen by the Owners. After all Owners receive a Dispute Notice, no Owner may bring a claim or commence any legal action related to or in connection with the matter set forth in the Dispute Notice until Dispute Resolution Period ends. ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY DISPUTE SHALL BE LITIGATED IN ANY SUCH COURT IN WELD COUNTY, COLORADO. EVERY OWNER AND THIRD PARTY OWNER ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION AND VENUE OF THE AFORESAID COURTS, SUBMITS ITSELF TO THE PERSONAL JURISDICTION OF SUCH COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS OR ANY SIMILAR DEFENSE. EACH OWNER AND THIRD PARTY OWNER HEREBY WAIVES ITS RESPECTIVE RIGHT TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING, OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OWNER OR THIRD PARTY OWNER AGAINST ANY OTHER OWNER OR THIRD PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OWNER AND THIRD PARTY OWNER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY.

10.15. **Further Assurances.** The Owners each agree to execute such documents as may be reasonably required to achieve the intent of the Owners pursuant to and in accordance with this Agreement with respect to the Property.

10.16. **Singular Includes Plural.** Where applicable the singular use of a word shall be deemed to include the plural use of the word.

10.17. **Calendar Days.** In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday, legal holiday of the State of Colorado, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday, legal holiday of the State.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Original Owners have executed this Agreement as of the day and year first above written.

THE ORIGINAL OWNERS:

Wingfoot, a Colorado Limited Liability Company

Date: _____

By: _____

Name: _____

Title: _____

THE CITY OF GREELEY, COLORADO,
a Colorado home rule municipal corporation, acting by and through its Water Enterprise

Date: _____

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____
City Manager

By _____
City Attorney

AVAILABILITY OF FUNDS:

By _____
Director of Finance

RECOMMENDED:

By _____
Director of Water and Sewer Department

EXHIBIT A-1 TO TENANCY IN COMMON AGREEMENT

Legal Description of Terry Ranch

(See Attached)

EXHIBIT A-2 TO TENANCY IN COMMON AGREEMENT

Depiction of Terry Ranch

(See Attached)

EXHIBIT B-1 TO TENANCY IN COMMON AGREEMENT

Special Warranty Deed

(See Attached)

EXHIBIT B-2 TO TENANCY IN COMMON AGREEMENT

Assignment and Assumption of Access Easement

(See Attached)

EXHIBIT C TO TENANCY IN COMMON AGREEMENT

Access Easement

(See Attached)

EXHIBIT D TO TENANCY IN COMMON AGREEMENT

Percentage Ownership Interest

Owner	Percentage Ownership Interest
Greeley	10/12,121th
Wingfoot	12,111/12,121th

**EXHIBIT M TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Conveyance Document: Special Warranty Deed

(See Attached)

After recording please return to:

City of Greeley
Attn: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Email: WSAdmin@Greeleygov.com

(This space reserved for
recording information)

****SUBJECT TO FURTHER NEGOTIATIONS****

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED, dated as of this ____ day of _____, 20__, is made between WINGFOOT WATER RESOURCES LLC, a [Delaware/Colorado] limited liability company, whose mailing address is 800 8th Ave, Ste. 122, Greeley, CO 80631 (“Grantor”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE, whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells conveys and confirm unto Grantor, as to an undivided 12,111/12,121th interest, and Grantee, as to an undivided 10/12,121th interest, as tenants in common, and their successors and assigns forever, all of Grantor’s right, title and interest in and to the following:

The Upper Laramie aquifer underlying that portion of the real property in Weld County, Colorado, described in Exhibit “1” attached hereto, including but not limited to all rights to withdraw all nontributary ground water therefrom pursuant to (i) the decree entered by the District Court for Water Division 1, Colorado (the “Water Court”) as adjudicated and quantified by the Decree entered on June 14, 2018, in Case Number 11CW275, (ii) any amendment to or modification or restatement of the Decree entered by the Water Court, and (iii) any new decree entered by the Water Court (collectively, the “Property Rights”).

TOGETHER WITH all the estate, right, title interest, claim and demand whatsoever of the Grantor, either at law or in equity, of, in and to the Property Rights; except and subject to the right of Connell Resources, Inc. to withdraw up to fifty (50) acre feet per year of nontributary ground water under Well Permit No. 25477-F pursuant to the Third Amendment to Sand and Gravel Lease dated December 10, 2015, and recorded at Reception No. 4166067 in the real property records of the Clerk and Recorder for Weld County, Colorado, which fifty (50) acre feet is excepted from the Decree at paragraph 8(A)(l), and subject to the reservation of Terry Grazing Association (the “Association”) of the right to withdraw, through wells owned and operated by the Association, nontributary ground water from the Upper Laramie aquifer underlying the real property in Weld County, Colorado described in Exhibit “1” attached hereto, solely for purposes

of watering livestock of the Association's or the Association's lessees that graze on such real property and only in such quantities as are reasonably necessary for such stock watering, pursuant to the Special Warranty Deed, dated September 30, 2016, and recorded at Reception No. 439451 in the real property records of the Clerk and Recorder for Weld County, Colorado.

TO HAVE AND HOLD the Property Rights unto the Grantee, its successors and assigns, forever, free and clear of all liens and encumbrances caused by Grantor, subject to (i) the exceptions described above, (ii) [those matters set forth on Exhibit "2" attached hereto], or which would be apparent by an inspection or survey of the real property described in Exhibit "1" attached hereto, (iii) that certain Groundwater Production Lease No. OT-111631 with the State of Colorado, acting through its State Board of Land Commissioners, dated as of January 18, 2018, (iv) that certain Easement Agreement between Grantor and the Association dated September 30, 2016 and recorded on [INSERT DATE] in the Records at Reception No. 4245309, as amended by that certain Amended Easement Agreement dated January 24, 2020 (the "Access Easement") as memorialized by that certain Memorandum of Easement Agreement dated [INSERT DATE, 2020] recorded in the Records at Reception No. [INSERT], and (v) all other matters of record as of the date hereof regarding the Property Rights in the Water Court or in Weld County, Colorado (the "Permitted Exceptions"). The Grantor, for itself, its successors and assigns, does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained rights and interest in the quiet and peaceable possession of the Grantee, its successors and assigns, against any and every person or persons claiming the whole or any part thereof, by, through or under the Grantor, subject to the exceptions described above and the Permitted Exceptions.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the date set forth above.

WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company

By:_____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ of WINGFOOT WATER RESOURCES LLC, a [] limited liability company.

Witness my hand and official seal.

My Commission Expires: _____

(seal)

Notary Public

EXHIBIT "1" ATTACHED TO AND MADE A PART OF
SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF THE LAND

Township 11 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

- Section 1: All.
Section 3: All.
Section 4: SE 1/4, EXCEPT a strip for Union Pacific Railroad Company as shown on map filed July 2, 1917, at Reception No. 255201.
Section 5: All East of Interstate Highway No. 25 described in Book 1619 at Page 614.
Section 8: W 1/2.
Section 9: All, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road described in Book 233 at Page 153.
Section 11: All.
Section 13: All.
Section 15: All, EXCEPT a Strip 200 Feet Wide for Union Pacific Railroad Company road described in Book 149 at Page 411.
Section 17: All, EXCEPT that part conveyed to American Telephone and Telegraph Company described in Book 1076 at Page 441.
Section 19: That part of said Section 19 described as follows: Beginning at the point of intersection of the East line of said Section and the North line of the County Road described in Book 999 at Page 193, said point being 30 feet North of the East quarter corner of said Section; thence Westerly along the Northerly line of said County Road to the intersection with the Easterly line of the Interstate Highway No. 25 as described in Book 1619 at Page 614; thence North easterly along the Easterly line of said Highway No. 25 to the North line of said Section; thence East to the Northeast corner of said Section; thence South to the point of beginning.
Section 21: All
Section 22: SW 1/4 NE 1/4; S 1/2 SE 1/4; NW 1/4 SE/4 and SW/4, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road as shown on Map filed July 2, 1917.
Section 23: All

Township 12 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

- Section 21: All in Colorado
Section 23: All in Colorado
Section 25: All
Section 27: All, EXCEPT a strip 400 feet wide in N 1/2 NW 1/4 and a strip 200 feet wide in SW 1/4 NW 1/4 of said Section conveyed to Union Pacific Railroad Company described in Book 233, Page 383.

Section 29: All East of Interstate Highway No. 25 described in Book 1619, Page 614
Section 34: SE 1/4
Section 35: All

[EXHIBIT “2” ATTACHED TO AND MADE A PART OF
SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS]

[Note to Draft: To be updated to match the title exceptions listed in Schedule B of the Title
Commitment]

**EXHIBIT N TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Conveyance Document: Assignment and Assumption of Access Easement

(See Attached)

After recording please return to:

City of Greeley
Attn: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Email: WSAdmin@Greeleygov.com

(This space reserved for recording information)

ASSIGNMENT AND ASSUMPTION OF ACCESS EASEMENT

This ASSIGNMENT AND ASSUMPTION OF ACCESS EASEMENT (“Assignment”), is entered into as of _____, 20__ (the “Effective Date”) by and among WINGFOOT WATER RESOURCES LLC, a [Delaware/Colorado] limited liability company (“Wingfoot”) and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE, whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 (“Greeley”).

RECITALS

A. WHEREAS, Terry Grazing Association, a Colorado Corporation, whose address is P.O. Box 3170, Cheyenne, Wyoming 82003 (the “Association”) owns 10,662 acres of land located in Weld County, Colorado, as described on the attached **Exhibit 1** (the “Terry Ranch”), which overlies certain ground water in the Upper Laramie aquifer.

B. WHEREAS, Wingfoot is the owner of nontributary deep aquifer ground water rights, underlying Terry Ranch, adjudicated and quantified on June 14, 2018, in Case Number 11CW275, District Court, Water Division 1, Colorado, and further described in that certain Special Warranty Deed, dated September 30, 2016, recorded October 17, 2016 in the real property records of the Clerk and Recorder for Weld County, Colorado (the “Records”), at Reception Number 4245308, and that certain Special Warranty Deed, dated April 30, 2018, recorded May 1, 2018 in the Records at Reception Number 4394951 (collectively, the “Water Rights”).

C. WHEREAS, Wingfoot entered into that certain Easement Agreement with the Association dated September 30, 2016 and recorded on **[INSERT DATE]** in the Records at Reception No. 4245309, as amended by that certain Amended Easement Agreement dated January 24, 2020 (the “Access Easement”) as memorialized by that certain Memorandum of Easement Agreement dated **[INSERT DATE, 2020]** recorded in the Records at Reception No. **[INSERT]**.

D. WHEREAS, the Access Easement pertains to certain rights of access to Terry Ranch for the benefit of the Water Rights.

E. WHEREAS, as of the Effective Date, Wingfoot has assigned to Greeley a 10/12,121th undivided tenant-in-common interest in the Water Rights.

F. WHEREAS, Wingfoot has agreed to assign to Greeley a 10/12,121th undivided tenant-in-common interest in and to the Access Easement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption. Wingfoot hereby assigns, transfers, and conveys to Greeley a 10/12,121th undivided tenant-in-common interest in and to (i) Wingfoot's right title and interest under the Access Easement, without warranty of any type, (ii) any and all other rights, privileges and appurtenances owned by Wingfoot, without warranty of any type, which relate to or are used in connection with the Water Rights and the Access Easement, to the extent assignable and (iii) all of Wingfoot's right, title and interest, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development or use of the Water Rights and the Access Easement. Greeley hereby accepts the foregoing assignment, agrees to be bound by all of the terms of the Access Easement and assumes and agrees to pay, perform and discharge any and all liabilities and obligations to be performed by Wingfoot under the Access Easement accruing and to be performed on or after the Effective Date. The payment or rental due under the Access Easement shall be prorated as of the Effective Date, Wingfoot being charged or credited, as the case may be, for all of same attributable up to the Effective Date, and Greeley being credited or charged, as the case may be, for its proportionate share of same attributable to the period on or after the Effective Date.

2. No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor (Wingfoot) and assignee (Greeley).

3. Time of the Essence. Time is of the essence in the performance by Wingfoot and Greeley of their obligations under this Assignment.

4. Notices. Any notice statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Assignment shall be in writing signed by the party giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service or certified mail (receipt requested) to each other party at the address set forth below and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Section 4: (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at such address; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; (iv) if a facsimile number is specified, on the date and at the

time shown on the facsimile; or (v) if an e-mail address is specified, on the date and at the time shown on the sent e-mail message if sent to the e-mail address specified below:

If to Wingfoot: Wingfoot Water Resources LLC
800 8th Ave, Ste 122
Greeley, CO 80631
Telephone: (720) 544-3932
Email: cdietzler@wingfootwaterresources.com

With a copy to: Hogan Lovells US LLP
1601 Wewatta St, Ste. 900
Denver, CO 80202
Telephone: (303) 899-7300
Email: scot.anderson@hoganlovells.com
ana.gutierrez@hoganlovells.com
mark.heimlich@hoganlovells.com

and a copy to: Christopher P. Dietzler
Email: cdietzler@poudrevalleycapital.com

If to Greeley: City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
Email: Sean.Chamber@greeleygov.com
Adam.Jokerst@greeleygov.com
WSAdmin@Greeleygov.com

With a copy to: City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Facsimile: (970) 350-9763
Email: Douglas.Marek@Greeleygov.com
Jerrae.Swanson@Greeleygov.com
CityAttorney@Greeleygov.com

5. Successors and Assigns. This Assignment shall be binding upon, and shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Severability. Whenever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under such law, then such provision shall be ineffective to the extent

of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

7. Waiver. The failure of either party to exercise any right or power given hereunder, or to insist upon strict compliance by the other party, with its obligations set forth herein and/or any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver of either party's rights to demand strict compliance with the terms and conditions of this Assignment.

8. Amendments. This Assignment may not be amended except by a writing signed by the parties hereto.

9. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to the choice of law principles thereof.

10. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Assignment.

11. Recordation. This Assignment shall be recorded by Greeley in the real property records of Weld County, Colorado, as soon as practicable upon the execution of the Assignment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first set forth above.

WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company

By: _____

Name: Christopher P. Dietzler

Title: Chief Executive Office

THE CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation,
acting by and through its WATER
ENTERPRISE

By: _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By: _____

City Manager

By: _____

City Attorney

AVAILABILITY OF FUNDS:

By: _____

Director of Finance

RECOMMENDED:

By: _____

Director of Water and Sewer Board

EXHIBIT "A" ATTACHED TO AND MADE A PART OF
ASSIGNMENT OF ACCESS EASEMENT

LEGAL DESCRIPTION OF THE LAND

Township 11 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

- Section 1: All.
Section 3: All.
Section 4: SE 1/4, EXCEPT a strip for Union Pacific Railroad Company as shown on map filed July 2, 1917, at Reception No. 255201.
Section 5: All East of Interstate Highway No. 25 described in Book 1619 at Page 614.
Section 8: W 1/2.
Section 9: All, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road described in Book 233 at Page 153.
Section 11: All.
Section 13: All.
Section 15: All, EXCEPT a Strip 200 Feet Wide for Union Pacific Railroad Company road described in Book 149 at Page 411.
Section 17: All, EXCEPT that part conveyed to American Telephone and Telegraph Company described in Book 1076 at Page 441.
Section 19: That part of said Section 19 described as follows: Beginning at the point of intersection of the East line of said Section and the North line of the County Road described in Book 999 at Page 193, said point being 30 feet North of the East quarter corner of said Section; thence Westerly along the Northerly line of said County Road to the intersection with the Easterly line of the Interstate Highway No. 25 as described in Book 1619 at Page 614; thence North easterly along the Easterly line of said Highway No. 25 to the North line of said Section; thence East to the Northeast corner of said Section; thence South to the point of beginning.
Section 21: All
Section 22: SW 1/4 NE 1/4; S 1/2 SE 1/4; NW 1/4 SE/4 and SW/4, EXCEPT a strip 400 feet wide for Union Pacific Railroad Company road as shown on Map filed July 2, 1917.
Section 23: All

Township 12 North, Range 67 West of The 6th P.M., County of Weld, State of Colorado:

- Section 21: All in Colorado
Section 23: All in Colorado
Section 25: All
Section 27: All, EXCEPT a strip 400 feet wide in N 1/2 NW 1/4 and a strip 200 feet wide in SW 1/4 NW 1/4 of said Section conveyed to Union Pacific Railroad Company described in Book 233, Page 383.

Section 29: All East of Interstate Highway No. 25 described in Book 1619, Page 614
Section 34: SE 1/4
Section 35: All

**EXHIBIT O TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

General Assignment and Bill of Sale

_(See Attached)

GENERAL ASSIGNMENT AND BILL OF SALE

(Terry Ranch)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, WINGFOOT WATER RESOURCES (“Assignor”), does hereby transfer, convey, bargain, sell and assign, unto THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation (“Assignee”), the following Existing Improvements (defined below):

1. Existing Improvements. The existing improvements as described on Exhibit “1” attached hereto and incorporated herein by reference, together with all right, title and interest of the Assignor, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the existing improvement (collectively, “Existing Improvements”).

2. Special Warranty. The Assignor covenants and agrees to and with the Assignees, their successors and assigns, to WARRANT AND DEFEND the title to the EXISTING IMPROVEMENTS against all and every person or persons whomever claiming by, through or under the Assignor, subject to those matters set forth on Exhibit “2” attached hereto and incorporated herein by reference. Assignor makes no other representations, warranties, promises, covenants or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future unto Assignee regarding the Existing Improvements, including, without limitation, value, quality, marketability, merchantability or suitability for any intended or contemplated use or purpose, and Assignee agrees that it is purchasing the Existing Improvements “as is,” “where is,” and “with all faults.” TO HAVE AND TO HOLD the Existing Improvements hereby assigned, transferred and conveyed unto the Assignees, their successors and assigns, for their own use, benefit and behalf forever.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Assignment is executed by the Assignor as of _____, 20____.

WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company

By: _____

Name: Christopher P. Dietzler

Title: Chief Executive Officer

EXHIBIT "1" ATTACHED TO AND MADE A PART OF THE GENERAL ASSIGNMENT
AND BILL OF SALE BY AND BETWEEN WINGFOOT WATER RESOURCES AND
WINGFOOT WATER RESOURCES AND THE CITY OF GREELEY

List of Existing Improvements, and Accompanying Map

EXHIBIT “2” ATTACHED TO AND MADE A PART OF THE GENERAL ASSIGNMENT
AND BILL OF SALE BY AND BETWEEN WINGFOOT WATER RESOURCES AND
WINGFOOT WATER RESOURCES AND THE CITY OF GREELEY

Permitted Exceptions

**EXHIBIT P TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Wingfoot's Amended and Restated Limited Liability Company Agreement

(See Attached)

LIMITED LIABILITY COMPANY AGREEMENT¹
OF
WINGFOOT WATER RESOURCES, LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, this “**Agreement**”) of Wingfoot Water Resources, LLC (the “**Company**”), is made and entered into as of [Date], 2021 by [_____], LLC, a _____ limited liability company, as the sole equity member (the “**Member**”), and Kristine E. Eppes, as the Independent Manager (as defined on Schedule A attached hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A attached hereto.

The Company has been formed as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. § 18-101 et seq.), as amended from time to time (the “**Act**”). The Member and Independent Manager hereby agree as follows:

Section 1. Formation.

A certificate of formation for Company (as the same may be amended or restated from time to time in accordance with the terms of the Act and this Agreement, the “**Certificate of Formation**”) was filed on [DATE] in the Office of the Secretary of State of the State of Delaware in conformity with the Act. The Company previously operated as a Colorado limited liability company but was converted to a Delaware limited liability company on [DATE].

Section 2. Name.

The name of the limited liability company is Wingfoot Water Resources, LLC.

Section 3. Principal Business Office.

The principal business office of the Company shall be located at [_____], or such other location as may hereafter be determined by the Member.

Section 4. Intentionally Omitted.

Section 5. Registered Agent and Registered Office.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is [Corporation Service Company, Wilmington, County of New Castle, Delaware 19808]. The registered office of the Company in the State of Delaware is [Corporation Service Company, Wilmington, County of New Castle, Delaware 19808].

¹ NTD: This Agreement subject to CSC review.

Section 6. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(d), the Member may act by written consent or any other way permitted by the Act.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), the Person acting as the Independent Manager pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as the Special Member and shall continue the Company without dissolution; provided for purposes of clarity, the Person acting as the Independent Manager shall not become a Special Member under any other events or circumstances except as specifically set forth above in this sentence. The Special Member shall not resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Manager pursuant to Section 10; *provided, however*, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member. The Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. The Special Member, in its capacity as Special Member, does not have authority or power to bind the Company. Except as required by any mandatory provision of the Act, the Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of the Special Member, the Person acting as Independent Manager pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the Person acting as an Independent Manager pursuant to Section 10 shall not be a member of the Company.

Section 7. Purpose.

(a) The purpose to be conducted or promoted by the Company is to engage in the following activities (collectively, the “**Limited Purposes**”):

- (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing, maintaining, improving, and disposing the

Company's interest in the Property and Assets (each, as defined in the Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch), dated _____, 2020 (the "**Master Agreement**"), by and between the Company and the City of Greeley, acting by and through its Water Enterprise ("**Greeley**")) held as tenants in common with Greeley and operating the tenancy in common with Greeley, to the extent not prohibited by the Transaction Documents;

- (ii) acquiring, owning, holding, selling, transferring, and exchanging the raw water deduction credits provided by Greeley (the "**Raw Water Credits**") as provided in or contemplated under the Transaction Documents;
- (iii) contributing funds to the construction escrow established pursuant to the Transaction Documents;
- (iv) entering into and otherwise performing and engaging in activities contemplated and asserting rights under the Transaction Documents; and
- (v) engaging in any lawful act or activity and exercising any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

After the termination of the Tenancy in Common Agreement, dated [DATE], by and between Greeley and the Company (the "Tenancy in Common Agreement"), the Company may engage in any and all activities permitted under the Act.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member or any Officer, or [_____] as "Authorized Signatory," on behalf of the Company, is hereby authorized to execute and deliver, the Transaction Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement, the Act or applicable law rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Officer or [_____] as "Authorized Signatory" to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(d), the Company, and the Member on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Subject to Section 9(d), the business and affairs of the Company shall be managed by or under the direction of the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Independent Managers. The initial number of Independent Managers shall be one. The initial Independent Manager designated by the Member is Kristine E. Eppes.

(b) Powers. Subject to Section 9(d), the Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Member has the authority to bind the Company.

(c) Member as Agent. To the extent of its powers set forth in this Agreement and subject to Section 9(d), the Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company.

(d) Limitations on the Company's Activities.

- (i) This Section 9(d) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.
- (ii) The Member shall not, until the later of (a) the earlier of (i) the termination of the Tenancy in Common Agreement or (ii) Greeley owning all of Wingfoot's TIC Interest (as defined in the Master Agreement), and (b) the earlier of (x) termination of the Construction Escrow or Construction Escrow Agreement (each as defined under the Master Agreement) and either the spending of the funds in the Construction Escrow or return of the funds in the Construction Escrow to the Company or Wingfoot, or (y) completion of the Project Infrastructure (such date, the "**Termination Date**"), amend, alter, change or repeal the definition of "Independent Manager" or Section 6(c), 7, 8, 9, 10, 16, 20-26, 30 or 31 or Schedule A (solely to the extent that any amendment, alteration, change, or repeal of the definitions in Section A would have the effect of amending, altering, changing, or repealing any of the immediately referenced sections in any material respect) of this Agreement without the written consent of the Independent Manager (which written consent shall not be unreasonably withheld, delayed, or conditioned). Subject to this Section 9(d), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 32.
- (iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Member or any other Person, until the Termination Date, neither the Member nor any other Person shall be authorized or empowered on behalf of the Company to, nor shall

they permit the Company to, and the Company shall not, without the prior written consent of both the Member and the Independent Manager (which written consent cannot be unreasonably withheld, delayed, or conditioned), take any Material Action; provided, however, that so long as any Obligation is outstanding, the Member may not authorize the taking of any Material Action unless there is at least one Independent Manager then serving in such capacity.

- (iv) The Member shall use commercially reasonable efforts to cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. So long as any Obligation is outstanding, the Member also shall use commercially reasonable efforts to cause the Company to comply with the following:
 - (A) The Company was, is and will be organized solely for the purpose of the Limited Purposes;
 - (B) The Company is not and will not be engaged, in any business unrelated to the Limited Purposes;
 - (C) The Company does not have and will not have any assets other than ordinary course assets (*i.e.*, cash, cash equivalents, prepaid expenses, receivables), and those related to the Water Rights and the Raw Water Credits and the proceeds from the sale of the above;
 - (D) The Company has not engaged in, sought or consented to, and will, to the fullest extent permitted by law, not engage in, seek or consent to (1) any dissolution, winding up, liquidation, or, (2) except as expressly permitted or contemplated under the terms of the Transaction Documents, while insolvent, any consolidation, merger, or sale of all or substantially all of its assets, to the extent such consolidation, merger, or sale would constitute a fraudulent transfer or fraudulent conveyance under state or federal law;
 - (E) The Company currently is and will be a limited liability company formed under the laws of the State of Delaware and shall at all times have a Special Member and Independent Manager as provided in Sections 6 and 10 of this Agreement;
 - (F) The Company has been, is, and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities from its then available assets (including a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due; *provided, however*, the foregoing shall

not require any owner of the Company to make any additional capital contribution, loans, or other funding to the Company;

- (G) The Company has not failed, and will not fail, to correct any known misunderstanding (known by the Member) regarding the separate identity of the Company and has not and shall not identify itself as a division of any other Person;
- (H) The Company has maintained and will maintain its accounts, books, and records separate from any other Person and has filed and will file its own tax returns, except to the extent that it has been or is required or permitted to file consolidated tax returns by law;
- (I) The Company has maintained and will maintain its own records, books and resolutions and will not enter into agreements in the name of other Persons;
- (J) The Company (i) has not commingled, and will not commingle, its funds or assets with those of any other Person and (ii) has not participated and will not share bank accounts with any other Person, except as may be contemplated under the Transaction Documents;
- (K) The Company has held and will hold its assets in its own name;
- (L) The Company has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or the Company, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Company;
- (M) The Company has maintained and will maintain its books, bank accounts, balance sheets, financial statements, accounting records and other entity documents separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required or permitted by GAAP; *provided, however,* that the Company may permit its assets to be listed as assets on the consolidated financial statements of an Affiliate if appropriate notation is made in at least one place on any such consolidated statements (including but not limited to footnotes) to indicate the Company's separateness from such Affiliate and to indicate that the Company's assets are not available to satisfy the debts and other obligations of such Affiliates

or any other Person (except as may be permitted under this Agreement); *provided* that notwithstanding anything to the contrary, the Company's cash or current assets may be distributed to the Member in accordance with applicable law;

- (N) While the Company has never had and does not currently have any employees or believe any employees will be necessary, the Company will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its business operations; *provided, however*, the foregoing shall not require any owner of the Company to make any additional capital contributions, loans, or other funding to the Company;
- (O) The Company has observed and will observe in all material respects all limited liability company formalities;
- (P) The Company has not had, and will not have, any indebtedness for borrowed money other than (i) as provided or contemplated under the Transaction Documents, (ii) unsecured trade and operation debt incurred in the ordinary course of business relating to the ownership and operation of the Water Rights and Raw Water Credits and the routine administration of the Company, which liabilities are not evidenced by a promissory note, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to or contemplated by the Transaction Documents;
- (Q) The Company has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as may be permitted pursuant to the Transaction Documents;
- (R) The Company has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;
- (S) The Company has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including but not limited to, paying for shared office space and services performed by any employee of an Affiliate, although it is not

currently contemplated that the Company will have the need for office space and the like;

- (T) To the extent applicable, the Company has maintained and used, now maintains and uses, and will maintain and use, separate invoices and checks bearing its name, and all invoices, and checks utilized by such Person or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being such Person's agent;
- (U) Except pursuant to the Transaction Documents, the Company has not pledged and will not pledge its assets for the benefit of any other Person;
- (V) The Company has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of the Company and not as a division or part of any other Person; *provided* that the owners of the Company can state that the Company is a portfolio company or investment of its owners (and statements consistent with that);
- (W) Except only for the Company's shared interest in the Property and Assets with Greeley (as such terms are defined in the Transaction Documents) or otherwise contemplated under the Transaction Documents, the Company has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (X) The Company has not made and will not make loans to any Person or hold evidence of Indebtedness issued by any other Person or entity (other than cash and investment grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);
- (Y) The Company has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are commercially reasonable (which are reasonably comparable to those of an arm's-length transaction with an unrelated third party, (ii) as may be permitted or contemplated by the Transaction Documents, and (iii) that agreement with Chris Dietzler dated _____, 201_ (the "Dietzler Agreement");

- (Z) Except as provided in Section 20 of this Agreement, the Company has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify, its partners, officers, directors, managers or members, as the case may be, unless such an obligation or indemnification is fully subordinated to the Company's Obligations under the Transaction Documents and shall not constitute a claim against the Company in the event that cash flow is insufficient to pay such Obligations;
- (AA) The Company does not and will not have any of its obligations guaranteed by any Affiliate; and
- (BB) Other than capital contributions and distributions permitted under the terms of this Agreement, the Company has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except (i) for the Dietzler Agreement and (ii) in the ordinary course of its business and on terms which are commercially reasonable terms (which are reasonably comparable to those of an arm's length transaction with an unrelated third party).

To the fullest extent permitted by law, failure of the Company, or an Officer or the Member on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.

Section 10. Independent Manager.

As long as any Obligation is outstanding, the Member shall use commercially reasonable efforts to cause the Company at all times to have at least one (1) Independent Manager who will be appointed by the Member. In acting or otherwise voting on matters referred to in Section 9(d)(iii) of this Agreement, the Independent Manager shall, to the extent permitted by law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, consider only the interests of the Member of the Company and the Company (including its creditors to the extent a duty would run from a manager to the Company's creditors under applicable law) in acting or otherwise voting on a Material Action (which such duties to the Member of the Company and its creditors, to the extent a duty would run from a manager to the Company's creditors under applicable law, in each case, shall be deemed to apply solely to the extent of their respective economic interests in the Company exclusive of (A) all other interests, (B) the interests of other affiliates of the Member of the Company or the Company, and (C) the interests of any group of affiliates of which the Member of the Company or the Company is a part). Except as provided in the second sentence of this Section 10, the Independent Manager shall not have any fiduciary duties to any Member, or any other Person; provided, however, that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Manager shall not be liable to the

Company, any Member, or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Manager acted in bad faith or engaged in willful misconduct. In the event of a vacancy in the position of Independent Manager, the Member shall, as soon as practicable, appoint a successor Independent Manager. The Independent Manager shall not be removed other than for Cause, and the Company shall be required to give Greeley at least fifteen (15) days' prior written notice of any removal along with the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements for an Independent Manager set forth in this Agreement. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement and the Independent Manager shall otherwise have no authority to bind the Company. The Independent Manager shall not at any time serve as trustee in bankruptcy for an Affiliate of the Company. Notwithstanding any other provision of this Agreement, the Independent Manager, in its capacity as Independent Manager, may only vote on, or otherwise participate in, Material Actions. The Independent Manager is hereby designated as a "manager" within the meaning of Section 18-101(12) of the Act, but solely for these express purposes.

Section 11. Officers.

The Member may appoint such Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Member. Any number of offices may be held by the same person. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Member. Any vacancy occurring in any office of the Company may be filled by the Member. The Member may also delegate its authority and rights to others by resolution. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(d), the actions of the Officers taken in accordance with such powers shall bind the Company.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and none of the Member, Special Member, Officers, or Independent Manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member, Independent Manager or Officer of the Company.

Section 13. Intentionally Omitted.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution or loan to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 14, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

Section 17. Books and Records.

The Company shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Intentionally Omitted.

Section 19. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member, the Special Member, the Officers, and the Independent Manager and any Affiliate of the Member, the Special Member, or the Independent Manager may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others, and the Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, none of the Member, the Special Member, Officers, or the Independent Manager nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the “**Covered Persons**”) shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person’s gross negligence, bad faith, or willful misconduct (or in the case of the Independent Manager, bad faith or willful misconduct).

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person’s gross negligence, bad faith, or willful misconduct (or in the case of the Independent Manager, bad faith or willful misconduct), with respect to such acts or omissions; *provided, however*, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Transaction Documents.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of a written undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law

or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Transaction Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign as a member, except as permitted under the Transaction Documents unless Greeley's prior written consent has been obtained. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to Section 23, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member, subject to any further restrictions expressly provided for in the Transaction Documents; *provided* that notwithstanding anything to the contrary, membership interests may be transferred or assigned (and additional members may be admitted to the Company) without the consent of the Independent Manager or any other Person; *provided* further that HA II, LLC and its Affiliates directly or indirectly own or control at least 50% of the membership interests of the Company.

Section 24. Dissolution.

(a) Subject to Section 9(d), the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act, or (iii) after no Obligation is outstanding, as determined by the Member. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or Special Member shall not cause the Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member and the Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or the Special Member, or the occurrence of an event that causes the Member or the Special Member to cease to be a member of the Company. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement and the Transaction Documents, to the fullest extent permitted by law, the Member hereby irrevocably waives any right or power

that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons).

Section 27. Tax Status

It is intended that the Company shall be a disregarded entity for federal, state, and local income tax purposes.

Section 28. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 29. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 30. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 10, 20, 21, 22, 23, 24, 26, 30 and 32, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Manager, in accordance with its terms.

Section 31. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 32. Amendments.

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member. Notwithstanding anything to the contrary in this Agreement, so long as any financial Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended without Greeley's prior written consent to the extent that such amendment, alteration, supplement, or amendment addresses the Limited Purposes, Material Actions, the limitations set forth in Section 9(d), and/or the rights, duties, and obligations of the Independent Manager (including but not limited to those set forth in Section 9(d)); *provided* that this sentence shall be terminated and have no force and effect upon the Termination Date.

Section 33. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 34. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 3, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the day first above written

MEMBER:

[INSERT SIG BLOCK]

**INDEPENDENT MANAGER/SPECIAL
MEMBER:**

Kristine E. Eppes

*Amended and Restated Limited Liability Company Agreement of
Wingfoot Water Resources, LLC*

SCHEDULE A

Definitions

A. Definitions

All terms not otherwise defined in this Schedule A, shall have the meaning ascribed to them elsewhere in this Agreement or in the Transaction Documents (defined below). When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy” means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person’s consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“Cause” means, with respect to the Independent Manager, (a) acts or omissions by such Person that constitute willful disregard or gross negligence of such Person's duties under this Agreement, (b) that such Person has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Person, (c) that such Independent Manager is unable to perform his or her duties as an Independent Manager, including but not limited to due to death, disability, or incapacity, (d) that such Independent Manager no longer meets the definition of “Independent Manager,” (e) such Person has taken

action with respect to the Company that is not expressly authorized under this Agreement, (f) such Person has disparaged the Company or Member or any of their Affiliates, or (g) that the fees and other compensation charged by such Person are in excess of industry standards. The industry standard annual fee for the services of the Independent Manager for the calendar year 2021 is \$2,625.00.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on [Date], as amended or amended and restated from time to time.

“Company” means Wingfoot Water Resources, LLC, a Delaware limited liability company.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 20(a).

“Independent Manager” shall mean (a) a natural person who is not at the time of initial appointment as an Independent Manager or at any time while serving as an Independent Manager of the Company and is not, has never been, and will not be at any time while serving as an Independent Manager:

(i) a stockholder, partner, member (other than as a special member) or other equity owner, director (other than as an independent director), officer, trustee, attorney or counsel of Company or an Affiliate of Company;

(ii) a customer, supplier, or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of the Company other than a nationally recognized professional service company that provides professional independent managers and special members and also provides other corporate services in the ordinary course of its business;

(iii) a Person Controlling or under common Control with any such stockholder, partner, member or other equity owner, director, officer, customer, supplier or other Person other than a nationally recognized professional service company that provides professional independent managers and special members and also provides other corporate services in the ordinary course of its business;

(iv) a member of the immediate family any such stockholder, partner, member, equity owner, director, officer, employee, manager, customer, supplier or other Person; or

(v) otherwise affiliated with Company or any stockholder, member, partner, director, officer, employee, attorney or counsel of Company, and

(b) has either (x) accounting or finance experience of at least five (5) years), or (y) both (i) prior experience as an independent director or independent manager for a corporation, a trust or a limited liability company whose charter documents required the unanimous consent of all independent directors or independent managers thereof before such corporation, trust or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable Federal or state law relating to bankruptcy and (ii) at least three (3) years of employment experience with one or more nationally-recognized professional service companies that provides, inter alia, professional independent directors or independent managers in the ordinary course of their respective business to issuers of securitization or structured finance instruments, agreements or securities or lenders originating commercial real estate loans for inclusion in securitization or structured finance instruments, agreements or securities and is at all times during his or her service as an Independent Manager of Company an employee of such a company or companies.

A natural Person who otherwise satisfies the foregoing definition other than subclause (a)(i) of this definition by reason of being the independent director or independent manager of a Special Purpose Entity affiliated with Company shall not be disqualified from serving as an Independent Manager of the Company, provided that the fees that such individual earns from serving as independent director or independent manager of affiliates of the Company in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

As used in this definition and in the definition of "Special Purpose Entity," the term "nationally recognized profession service company" shall mean Corporation Service Company, CT Corporation, Stewart Management Corporation, National Registered Agents, Inc. and Independent Director Services, Inc. and their respective successors and any other Person approved in writing by Greeley.

"Material Action" means to (a) (i) consolidate or merge the Company while insolvent with or into any Person, to the extent such consolidation or merger would constitute a fraudulent transfer or fraudulent conveyance under state or federal law, or (ii) sell all or substantially all of the assets of the Company while insolvent, to the extent such sale would constitute a fraudulent transfer or fraudulent conveyance under state or federal law, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or (b) consent to the institution of bankruptcy or insolvency proceedings against the Company or file a voluntary bankruptcy petition or any other petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee in an assignment for the benefit of creditors, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company or admit in writing the Company's inability to pay its debts generally as they become due, or take material action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company.

“Member” means [_____], LLC, a [_____] limited liability company, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; *provided, however*, the term “Member” shall not include the Special Member.

“Obligation” shall mean any indebtedness of the Company or financial obligations of the Company arising under the Transaction Documents in effect as of any date of determination; *provided* that all Obligations shall be deemed to have terminated upon the Termination Date.

“Officer” means an officer of the Company described in Section 11.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Special Member” means, upon such person’s admission to the Company as a member of the Company pursuant to Section 6(c), a person acting as Independent Manager, in such person’s capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement. For the avoidance of doubt, the term “Member” shall not include the Special Member.

“Termination Date” has the meaning ascribed to it in Section 9(d)(ii).

“Transaction Documents” means [insert list of Transaction Documents], each dated on or about the date hereof, and all other documents and certificates contemplated thereby or delivered in connection therewith.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Membership Interest</u>
[] LLC, a Delaware limited liability company	[Insert]	100%

**EXHIBIT Q TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Tenancy in Common Conveyance Document

(see attached)²

² NTD: To be drafted.

Form of Tenancy in Common Conveyance Document

TO BE DRAFTED

1. Form SWD
2. Form Assignment of Easement

**EXHIBIT R TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Credit Escrow Agreement

(see attached)

CREDIT ESCROW AGREEMENT

by and among

**THE CITY OF GREELEY, COLORADO,
acting by and through its
WATER ENTERPRISE,**

**WINGFOOT WATER RESOURCES, LLC,
a Delaware limited liability company**

and

_____,
**a _____,¹
as Escrow Agent**

Relating to the deposit and release of Certificates evidencing Raw Water Credits
pursuant to the
Master Purchase, Sale and Raw Water Credit Administration Agreement
dated as of _____, 2020,
between
Wingfoot Water Resources, LLC, a Delaware limited liability company, and
the City of Greeley, Colorado, acting by and through its Water Enterprise

Dated as of _____, 2020

¹ NTD: As discussed, title company likely be the escrow agent.

CREDIT ESCROW AGREEMENT

THIS CREDIT ESCROW AGREEMENT (as the same may be modified, amended, supplemented, restated or replaced, this “Agreement”), made and entered into as of _____, 2020 (the “Effective Date”) by and among **THE CITY OF GREELEY, COLORADO, acting by and through its WATER ENTERPRISE** (together with its permitted successors and assigns, “Greeley”), **WINGFOOT WATER RESOURCES, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “Wingfoot”) and _____, a _____, as escrow agent (the “Escrow Agent”);

WITNESSETH:

WHEREAS, Greeley and Wingfoot have previously entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch) dated as of _____, 2020 (as the same may be modified, amended, supplemented, restated or replaced, the “Master Agreement”) for the purpose of providing for the acquisition, financing, construction, improvement and installation of certain water rights, infrastructure improvements and appurtenant property for use by Greeley in its municipal water system; and

WHEREAS, the Master Agreement contemplates that, upon the occurrence of certain events, Greeley shall issue certificates evidencing the ownership of Raw Water Credit(s) to Wingfoot (each a “Certificate”, collectively the “Certificates”); and

WHEREAS, the Master Agreement contemplates that, each calendar year beginning in 202__ [insert year of the first July following the Closing Date] and expiring after calendar year 204__ [insert year which is 25 years after the first July following the Closing Date] (“Option Period”), either (a) Greeley may elect to purchase up to one hundred sixty-seven (167) Raw Water Credits (the “Call Option”) by sending written notice to Wingfoot and Escrow Agent on or before July 1 of such year (“Call Notice”), or (b) Wingfoot may elect to sell up to one hundred sixty-seven (167) Raw Water Credits (the “Put Option”) by sending written notice to Greeley and Escrow Agent on or before July 15 of such year (“Put Notice”); and

WHEREAS, pursuant to the Master Agreement, Greeley and Wingfoot have agreed to deposit twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits (each, an “Escrowed Certificate”, and collectively, the “Escrowed Certificates”) in escrow for the purpose of reserving sufficient Raw Water Credits to support the Put Option and the Call Option; and

WHEREAS, Greeley and Wingfoot desire to establish an escrow to provide for the custody and release of the Escrowed Certificates in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein set forth the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Master Agreement. Whenever the context may require, any pronouns used herein shall be deemed and construed to include correlative words of the masculine, feminine and neuter forms. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

ARTICLE II

ESTABLISHMENT OF ESCROW; DEPOSIT AND RELEASE OF CERTIFICATES

Section 2.01. Creation of the Escrow and Deposit of Certificates.

(a) Wingfoot and Greeley hereby create an escrow (the “Escrow”), with the Escrow Agent which shall be held and administered by the Escrow Agent in accordance with the provisions of this Agreement.

(b) On the Effective Date, Greeley shall deposit the Escrowed Certificates in the Escrow.

Section 2.02. Release of Certificates.

(a) The Escrowed Certificates shall be released from the Escrow only as follows:

(b) In each year during the Option Period:

(i) If Escrow Agent receives a Call Notice from Greeley on or before July 1, or if Escrow Agent receives a Put Notice from Wingfoot on or before July 15, then on July 16, Escrow Agent shall release one Escrowed Certificate to Greeley.

(ii) If Escrow Agent does not receive a Call Notice from Greeley on or before July 1, and Escrow Agent does not receive a Put Notice from Wingfoot on or before July 15, then on July 16, Escrow Agent shall release one Escrowed Certificate to Wingfoot.

(iii) Escrowed Certificates released pursuant to Sections 2.02(b)(i) or (ii), above, shall be sent by Escrow Agent to the notice addresses listed in Section 4.06, below, via recognized overnight courier service for delivery to the recipient on the following business day.

Section 2.03. Termination of this Agreement. Upon the occurrence of any of the following events, and provided that the fees and expenses of the Escrow Agent are paid, this Agreement shall terminate upon the earliest to occur of: (a) the release of the last Escrowed Certificate in Escrow Agent's possession; (b) receipt by the Escrow Agent of written notice acknowledged by Greeley and Wingfoot that the Master Agreement has been terminated, in which event Escrow Agent shall release all of the Escrowed Certificates to Greeley, or (c) receipt by the Escrow Agent of written notice of termination of this Agreement acknowledged by Greeley and Wingfoot, in which event Escrow Agent shall release all of the Escrowed Certificates to Greeley.

ARTICLE III

CONCERNING THE ESCROW AGENT

Section 3.01. Duties of Escrow Agent. The Escrow Agent shall have no duties or responsibilities whatsoever except such duties and responsibilities as are expressly set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against the Escrow Agent.

Section 3.02. Liability of the Escrow Agent.

(a) The Escrow Agent shall not be liable for any loss or damage in tort, contract or otherwise, including counsel fees and expenses, resulting from or in connection with the execution and delivery of this Agreement, the establishment of the Escrow or by reason of any other action, omission or error hereunder, except for any loss or damage arising out of its own negligence or misconduct. Without limiting the generality of the foregoing, the Escrow Agent shall not be liable for any action taken or omitted in reliance on any notice, direction, consent, certificate, affidavit, statement, designation or other paper or document reasonably believed by it to be genuine and to have been duly and properly signed or presented to it by the Director of the City of Greeley Water and Sewer Department or his or her designee, with respect to Greeley, and [_____] or his or her designee, with respect to Wingfoot.

Section 3.03. Fees, Expenses and Indemnification.

(a) Greeley and Wingfoot shall be responsible for and shall pay to the Escrow Agent, in equal shares, for its performance hereunder: (i) such compensation as may mutually be agreed upon in writing; and (ii) the Escrow Agent's reasonable out-of-pocket expenses (including reasonable third-party counsel fees and expenses) incurred in connection with this Agreement, to the extent agreed upon in writing (collectively, the "Escrow Agent Fees").

(b) Wingfoot, on the one hand, and, to the extent permitted by law, Greeley, on the other hand, severally (on a 50%/50% basis) and not jointly, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all claims, demands, expenses (including reasonable counsel fees and expenses) and liabilities of any and every nature (the "Indemnified Costs") which the Escrow Agent may sustain or incur or which may be asserted against the Escrow Agent as a result of any action taken or omitted by the Escrow Agent as provided hereunder, except to the extent any such

Indemnified Costs arise out of the Escrow Agent's bad faith, negligence or willful misconduct. At any time, the Escrow Agent may apply to Greeley or Wingfoot, as applicable for written instructions with respect to any matter arising under this Agreement and shall be fully protected in acting in accordance with such instructions, provided that such action are not contrary to the express terms of this Agreement. If the Escrow Agent receives conflicting instructions it shall not be obligated to act. In addition, the Escrow Agent may, as reasonably necessary, consult its own counsel and shall be fully protected with respect to any action taken or omitted in good faith in accordance with such advice or opinion of counsel. Notwithstanding anything to the contrary in this Agreement, to the extent any Indemnified Costs arise out of Wingfoot's or Greeley's bad faith, negligence or willful misconduct, such party shall be solely responsible for indemnifying the Escrow Agent for such Indemnified Costs.

Section 3.04. Permitted Acts. Nothing herein shall prevent the Escrow Agent from engaging in business dealings with either Greeley or Wingfoot, either as customers or borrowers or in any other capacity or in any other matter provided that it is unrelated to the subject matter of this Agreement.

Section 3.05. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, after sending written notice of the same to Wingfoot and Greeley, retain the Escrowed Certificates until Escrow Agent (a) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrowed Certificates, (b) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrowed Certificates, in which event the Escrow Agent will be authorized to make such disbursement in accordance with such final court order, arbitration decision, or agreement, or (c) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent will be relieved of all liability as to the Escrowed Certificates and will be entitled to recover reasonable and documented out-of-pocket attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent will be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry or consent.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Amendments to this Agreement. This Agreement is made for the benefit of Greeley and Wingfoot and it shall not be repealed, revoked, altered or amended without the prior written consent of both such parties and the Escrow Agent, except for the termination of this Agreement in accordance with Section [4.04] hereof.

Section 4.02. Severability. If any one or more of the provisions in this Agreement shall be determined by a court of competent jurisdiction to be contrary to law, each such provision shall be

deemed and construed to be severable from the remaining provisions hereof and its invalidity shall not affect the validity of the remaining provisions of this Agreement.

Section 4.03. Agreement Binding. All the covenants, promises and agreements in this agreement contained by or on behalf of Greeley, Wingfoot or the Escrow Agent shall bind and inure to the benefit of their respective permitted successors and assigns, whether or not so expressed.

Section 4.04. Termination, Resignation and Removal of the Escrow Agent.

(a) The provisions of Sections 3.02 and 3.03 shall survive the termination of this Agreement.

(b) The Escrow Agent may evidence its intent to resign by giving written notice to Greeley and Wingfoot. Such resignation shall take effect only upon delivery of the Escrowed Certificates to the successor Escrow Agent agreed upon in writing by Greeley and Wingfoot, and the Escrow Agent shall thereupon be discharged from all obligations under this Agreement and shall have no further duties or responsibilities in connection herewith. The Escrow Agent shall deliver the Escrowed Certificates without unreasonable delay, and no later than [two] ([2]) business days, after receiving the designation of the successor Escrow Agent and upon payment of all of its fees and expenses due and owing as of such date.

(c) Greeley and Wingfoot may evidence their intent to remove the Escrow Agent with or without cause by giving joint written notice to the Escrow Agent and Wingfoot. Such removal shall take effect only upon delivery of the Escrowed Certificates to the successor Escrow Agent designated in writing by Greeley and Wingfoot, and the Escrow Agent shall thereupon be discharged from all obligations under this Agreement and shall have no further duties or responsibilities in connection herewith. The Escrow Agent shall deliver the Escrowed Certificates without unreasonable delay, and no later than [two] ([2]) business days, after receiving the designation of the successor Escrow Agent in accordance with this Agreement and upon payment of all of its fees and expenses due and owing as of such date.

(d) If after thirty (30) days from the date of delivery of its written notice of intent to resign or of the joint written notice of Greeley and Wingfoot to remove, the Escrow Agent has not received a written designation of the successor Escrow Agent, the Escrow Agent's sole responsibility shall be in its sole discretion either to retain custody of the Escrowed Certificates and release the Escrowed Certificates in accordance with this Agreement or to apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent and after such appointment to have no further duties or responsibilities in connection herewith upon the transfer of the Escrowed Certificates to the successor Escrow Agent. Notwithstanding anything to the contrary set forth in this Agreement, if Escrow Agent is liable for the payment of any costs or expenses under this Agreement, the replacement of the Escrow Agent shall not release Escrow Agent of its obligation to pay all such costs and expenses in accordance with this Agreement.

Section 4.05. Execution in Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute one and the same instrument. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

Section 4.06. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by electronic mail with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than 3 Business Days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

If to Greeley: City of Greeley
1001 11th Street, 2nd Floor
Greeley, Colorado 80631
Attn: Director, Water and Sewer
Telephone: (970) ____ - ____
Email: _____

If to the Escrow Agent: _____

_____. CO 80____
Attn: _____
Telephone: (____) ____ - ____
Email: _____

If to Wingfoot: Wingfoot Water Resources
800 8th Avenue, Suite 122
Greeley, Colorado 80631
Attn: _____
Telephone: (720) 544-3932
Email: _____

Section 4.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to any choice of law or conflict of

law provision or rule that would cause the application of the law of any jurisdiction other than the State of Colorado.

Section 4.08. Time of Essence. Time is of the essence in the performance of the obligations from time to time imposed upon the Escrow Agent by this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers as of the date first above written.

CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation,
acting by and through its WATER
ENTERPRISE

By _____
_____, Water and Sewer Board
Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By: _____
City Manager

By _____
City Attorney

AVAILABILITY OF FUNDS:

By: _____
Director of Finance

RECOMMENDED:

By: _____
Director of Water and Sewer Board

WINGFOOT WATER RESOURCES, LLC, a
Delaware limited liability company

By _____
Its _____

_____, _____, as the
Escrow Agent

By _____
_____, Vice President